

ADMINISTRATIVE PROCEEDING

BEFORE THE

SECURITIES COMMISSIONER OF SOUTH CAROLINA

IN THE MATTER OF:

**David Zebny,
Z Restaurant Group LLC, and
Café Z Epicerie Management
Company, LLC d/b/a SGBD
Restaurants, LLC,

Respondents.**

**ORDER TO CEASE AND DESIST
File No. 13098**

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 activities of David Zebny (“Zebny”), Z Restaurant Group, LLC (“ZRG”), and Café Z Epicerie Management Company, LLC d/b/a SGBD Restaurants, LLC (“SGBD”) (collectively, the “Respondents”), which, if true, would constitute violations of the Act; and

WHEREAS, the information led the Division to open and conduct an investigation of the Respondents pursuant to S.C. Code Ann. § 35-1-602; 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. RESPONDENTS

2. Respondent Zebny is a Massachusetts resident with a last known address of 476 Jamaica Way, Jamaica Plain, Massachusetts 02130.

3. Respondent ZRG was a Delaware limited liability company with a last known address of 17 Dunster Street, Cambridge, Massachusetts 02138.

4. Respondent SGBD was a California limited liability company with a last known address of 282 Bon Air Center, Greenbrae, California 94904.

III. FINDINGS OF FACT

5. Respondent Zebny was the owner, operator, and control person of Respondents ZRG and SGDB.

6. The Respondents operated a California restaurant, Café Z, and marketed it as a potential restaurant franchise ripe for nationwide growth.

7. In order to finance the operations of Respondents ZRG and SGDB, the Respondents offered shares of stock (the "Shares") to numerous investors throughout the United States, including South Carolina.

8. The Shares were not registered with the Division or exempt from registration.

9. The agents engaged by the Respondents to offer and sell the Shares were not registered with the Division or exempt from registration.

A. Respondents' Scheme

10. In order to aid in the offer and sale of the Shares, the Respondents engaged a self-proclaimed financial expert and purveyor of investment opportunities (the "Promoter") to recommend the investment to her clients.

11. In addition to numerous books on the subject of "wealth-building," the Promoter held various seminars (the "Seminar" or the "Seminars") for investors wherein she and others offered various opportunities to invest in numerous companies.

12. The Respondents engaged the Promoter to offer the Shares to the attendees at her Seminars and compensated her with commissions based on the number of investors she directed to the Respondents.

B. The Scheme Ensnarers South Carolina Investors.

13. In 2006, two South Carolina investors (the "South Carolina Investors"), having read several of her books, contacted the Promoter and sought her investment advice.

14. Following several conversations with the Promoter, the South Carolina Investors chose to attend a Seminar in April of 2006 (the "April 2006 Seminar"), where various investment opportunities recommended by the Promoter would be offered to investors.

15. Respondent Zebny also attended the April 2006 Seminar, at which he and the Promoter offered the Shares to the South Carolina Investors and other attendees.

16. In connection with his offer and sale of the Shares in April 2006 and otherwise, Respondent Zebny, on behalf of himself and Respondent ZRG and SGBD, made numerous false and misleading statements and omissions, including, but not limited to, the following:

- a. Falsely stating that he was a successful restaurant owner and expert in the restaurant business;
- b. Falsely stating that he had obtained a Masters of Business Administration from Harvard Business School;
- c. Falsely stating that he had worked as an investment banker with Fidelity Investments for over sixteen (16) years;
- d. Falsely stating that the South Carolina Investors and other Seminar attendees had an exclusive opportunity to invest in ZRG and that its business model was a proven success, while omitting to disclose that he had, in fact, solicited at least seven million dollars (\$7,000,000) from investors who were not Seminar attendees;
- e. Falsely stating that his business model was a proven success and promising above-market returns of twenty-two to twenty-five percent (22-25%), while omitting to disclose that the Shares were, in reality, highly speculative;
- f. Omitting to disclose the significant contingent liability faced by the Respondents in light of their failure to register the Shares and the lack of applicability of any exemption from registration;
- g. Omitting to disclose that the Shares could not legally be offered for sale in one or more of the jurisdictions in which they were offered or sold; and
- h. Omitting to disclose that he diverted much of the proceeds of the sale of the Shares to fund another, wholly separate speculative restaurant venture in Boston, Massachusetts.

17. Following his presentation at the April 2006 Seminar, Respondent Zebny visited South Carolina on at least two (2) occasions. During these visits, Respondent Zebny continued to offer the Shares to the South Carolina Investors, as well as to family members and friends of the South Carolina Investors.

18. Rather than the promised above-market returns of twenty-two to twenty-five percent (22-25%), the South Carolina Investors lost in excess of seven hundred thousand dollars (\$700,000).

19. On October 21, 2009, after the failure of his final restaurant venture, Respondent Zebny filed for bankruptcy.

IV. CONCLUSIONS OF LAW

20. 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.

21. Pursuant to S.C. Code Ann. § 35-1-102(2), an agent is an individual, other than a broker-dealer, who represents a broker-dealer in effecting or attempting to effect purchases or sales of securities, or represents an issuer in effecting or attempting to effect purchases or sales of the issuer's securities.

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

23. Pursuant to S.C. Code Ann. § 35-1-301, it is unlawful for a person to offer or sell a security in this State unless that security is registered, a federal covered security, or exempt from registration.

24. Pursuant to S.C. Code Ann. § 35-1-402(a), it is unlawful for an individual to transact business as an agent in this State unless that individual is registered or exempt from registration.

25. Pursuant to S.C. Code Ann. § 35-1-402 (d), it is unlawful for an issuer, engaged in offering, selling, or purchasing securities in this State, to employ or associate with an agent who transacts business in this State on behalf of that issuer unless that agent is registered under S.C. Code Ann. § 35-1-402 (a).

26. 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.

27. 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, 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.

28. 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 the Respondent, the matter will be scheduled for a hearing.

29. The Shares offered and sold by the Respondents constitute securities as defined by the Act.

30. The Shares offered and sold by the Respondents were neither federal covered securities, exempt from registration, nor registered with the Division and were therefore sold in violation of the Act.

31. Both Respondent Zebny and the Promoter acted as agents in the offer and sale of the Shares to the South Carolina Investors on behalf of Respondents ZRG and SGDB.

32. Respondents ZRG and SGBD employed two unregistered agents in violation of the Act.

33. The Respondents sold securities in this State: (1) while employing a scheme, device, or artifice to defraud; (2) through the making of untrue statements of material fact or omitting 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; and (3) by engaging in an act, practice, or course of business that operated as a fraud or deceit upon another person.

34. It is in the public interest, for the protection of investors, and consistent with the purposes of the Act that the Respondents 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 their 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 Respondents and every successor, affiliate, control person, agent, servant, and employee of each Respondent, and every entity owned, operated, or indirectly or directly controlled by or on behalf of any Respondent **CEASE AND DESIST** from transacting business in this State in violation of the Act, and, in particular, §§ 35-1-301, 35-1-402, and 35-1-501 thereof; and
- b. Respondent Zebny pay a civil penalty in the amount of One Hundred Thousand Dollars (\$100,000) if this Order becomes effective by operation of law, or, if Respondent Zebny seeks a hearing and any legal authority resolves this matter, pay a civil penalty in an amount not to exceed Ten Thousand Dollars (\$10,000) for each violation of the Act by Respondent Zebny, and the actual cost of the investigation or proceeding; and

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 Respondents 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 Respondents are hereby notified that they each have the right to a hearing on the matters contained herein. To schedule such a hearing, a 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 a Respondent requests a hearing, the Division, within fifteen (15) days after receipt of a request in a record from a Respondent, will schedule the hearing for the requesting Respondent(s).

In the written Answer, a 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. A Respondent without knowledge or information sufficient to form a belief as to the truth of an allegation shall so state.

Failure by a 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 that Respondent of the right to such a hearing. Failure of a 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 that 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 that are available under the Act, including remedies related to the offers and sales of securities by the Respondents set forth above.

CONTINUING TO ENGAGE IN ACTS DETAILED BY THIS ORDER AND/OR SIMILAR ACTS MAY RESULT IN THE DIVISION'S FILING ADDITIONAL ADMINISTRATIVE ACTIONS AND/OR SEEKING FURTHER ADMINISTRATIVE FINES. WILLFUL VIOLATION OF THIS ORDER COULD RESULT IN CRIMINAL PENALTIES PURSUANT TO S.C. CODE ANN. § 35-1-508.

ENTERED, this the 10th day of March, 2014.

ALAN WILSON
SECURITIES COMMISSIONER

By: Tracy Meyers
TRACY A. MEYERS
Deputy Securities Commissioner

ISSUANCE REQUESTED BY:



IAN P. WESCHLER
Assistant Attorney General
Securities Division
Rembert C. Dennis Building
1000 Assembly Street
Columbia, S. C. 29201

STATE OF SOUTH CAROLINA
OFFICE OF THE ATTORNEY GENERAL
SECURITIES DIVISION

CERTIFICATE OF SERVICE AND
AFFIDAVIT OF COMPLIANCE
File Number 13098


I hereby certify that I served upon the individual/entity listed below a copy of the document indicated below and dated March 11, 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:

David Zebny, Individually & on behalf of
Z Restaurant Group, LLC, and
Café Z Epicerie Management Company, LLC
d/b/a SGBD Restaurants, LLC
476 Jamaica Way
Jamaica Plain, MA 02130

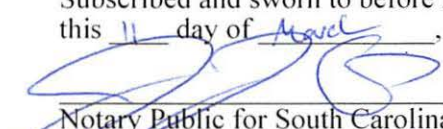
Document(s): Order to Cease and Deist

Mailed March 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 March, 2014.


Notary Public for South Carolina

My commission expires: 7/2/18