

**ADMINISTRATIVE PROCEEDING**

**BEFORE THE**

**SECURITIES COMMISSIONER OF SOUTH CAROLINA**

**IN THE MATTER OF:**

**Gregory Dale McClelland, Frederick  
Dale Miller, and MFI of Georgia, Inc.,**

**Respondents.**

**ORDER TO CEASE AND DESIST**

**File No. 12018**

**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 MFI of Georgia, Inc. (“MFI”), Gregory Dale McClelland (“McClelland”), and Frederick Dale Miller II (“Miller”) (collectively referred to as the “Respondents”); 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 Respondents had violated, were violating, or were about to violate the Act; and

**WHEREAS**, in connection with the investigation, 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 McClelland is a South Carolina resident with a last known address of 309 Kings Drive, Myrtle Beach, South Carolina 29588.
3. Respondent Miller is a South Carolina resident with a last known address of 4271 Hibiscus Drive, Apartment 101, Little River, South Carolina 29566. At all times relevant to this Order, Miller was the chairman and registered agent of MFI.
4. Respondent MFI was a South Carolina corporation with a last known address of 4601 Greenbriar Drive, Little River, South Carolina 29566.
5. MFI was administratively dissolved as a South Carolina corporation on or about November 30, 2007.

## **III. FINDINGS OF FACT**

6. On or about April 28, 2007, a Washington resident (the "Investor") attended a financial workshop in Seattle, Washington (the "Seattle Presentation").
7. At the Seattle Presentation, the Investor was introduced to two individuals who informed the Investor of an opportunity to finance a golf course in Georgetown, South Carolina (the "Golf Course").
8. Approximately one week after the Seattle Presentation, one of the individuals whom the Investor met at the Seattle Presentation contacted the Investor to arrange an introduction between the Investor and McClelland.
9. Although they never met in person, the Investor had numerous telephone conversations with McClelland.
10. In the course of the telephone conversations with the Investor, McClelland introduced himself and Miller to the Investor as representatives of MFI.

11. The Respondents represented that they urgently needed funding from the Investor so that a real estate contract for the Golf Course could be secured for the benefit of the Respondents.
12. On or about June 7, 2007, the Respondents and the Investor executed a Purchase and Sale Agreement (the "Agreement").
13. The Agreement stated that the Respondents would sell the Investor 138,706 carats of rubies and sapphires (the "Gemstones") in exchange for \$200,000 from the Investor.
14. Ostensibly, the Gemstones were to serve as collateral to secure the Investor's investment in the Golf Course.
15. The Agreement further stated that the Respondents would purchase the Gemstones back from the Investor on or before July 22, 2007 for \$300,000.
16. The Agreement further stated that the Investor would not take possession of the Gemstones before July 22, 2007; however, in the event that the Respondents did not repurchase the Gemstones from the Investor for \$300,000 on or before July 22, 2007, the Respondents would deliver the Gemstones to any location in the United States as directed by the Investor.
17. As proof of the Respondents' interest in the Gemstones, Miller produced numerous documents for the Investor's review, including:
  - a. A document representing that the Respondents owned 721,885 carats of rubies and sapphires (the "Letter of Gifting");
  - b. A memorandum that promotes an individual (the "Appraiser") as an experienced and capable gem cutter and gemological appraiser (the "Appraiser Memo");

- c. A “Certificate of Appraisal” signed by the Appraiser describing 1,040,325 carats of rough, uncut, mine run ruby and sapphire corundum and appraising them at \$30,024,068;
  - d. A “Certificate of Appraisal” signed by the Appraiser, describing 721,885 carats of rough, uncut, mine run ruby and sapphire corundum and appraising them at \$20,833,601; and
  - e. A sworn statement from a notary stating that he personally witnessed the appraisal and secure storage of the Gemstones.
18. On or about June 13, 2007, pursuant to the Agreement, the Investor wired \$200,000 to an account controlled by the Respondents (the “MFI Account”).
19. Contrary to the representations made by the Respondents in connection with the offer and sale of the securities, the Respondents did not use the Investor’s investment to facilitate the purchase of the Golf Course.
20. Contrary to the representations made by the Respondents in connection with the offer and sale of the securities, the Respondents failed to repurchase the Gemstones from the Investor for \$300,000 on or before July 22, 2007; indeed, the Respondents did not attempt to repurchase the Gemstones at any price.
21. Contrary to the representations made by the Respondents in connection with the offer and sale of the securities, the Respondents failed to deliver the Gemstones to the Investor.
22. On or about September 13, 2007, the Investor sent a letter to Miller expressing concern over the Investor’s current situation and a general lack of communication by the Respondents (the “Investor’s Letter”).

23. The Investor's Letter stated that the Respondents had until October 1, 2007 to either tender payment for the Gemstones or deliver the Gemstones to the Investor's home.
24. In subsequent telephone conversations, Miller informed the Investor that the Respondents had raised funds from a foreign investor. Miller stated that these funds were frozen in a bank in Morocco due to Homeland Security validation requirements and in order to facilitate the release of the funds, the Investor would need to provide additional funding.
25. On or about February 19, 2008, the Respondents executed a document and faxed it to the Investor (the "February Contract").
26. The February Contract stated that Miller would pay the Investor \$1,000,000 within thirty (30) days of the date the February Contract was executed.
27. On or about February 20, 2008, the Investor wired a further \$11,000 to the MFI Account to assist with the release of the sum referenced in the February Contract.
28. Contrary to the representations made by the Respondents in connection with the offer and sale of the securities, the Investor's \$11,000 was not used to assist with the release of any frozen funds.
29. The Investor failed to realize a return on investment, never took possession of the Gemstones, and lost the entirety of the \$211,000 placed with the Respondents.
30. Respondents Miller and McClelland represented Respondent MFI in effecting or attempting to effect the transactions referenced above.
31. At no time relevant to the events stated herein was Respondent Miller registered with the Division as an agent, and no exemption from registration has been claimed by Respondent Miller.
32. At no time relevant to the events stated herein was Respondent McClelland registered

with the Division as an agent, and no exemption from registration has been claimed by Respondent McClelland.

33. At no time relevant to the events stated herein were the securities at issue registered with the Division or federal covered securities, and no exemption from registration has been claimed by the Respondents.
34. In connection with the offer and sale of the securities, the Respondents made numerous false and misleading statements and omissions, including, but not limited to, the following:
  - a. Misrepresenting the value and/or the existence of the Gemstones by way of notarized documents and sworn statements;
  - b. Falsely representing to the Investor that payment of \$11,000 would facilitate the release of the sum referenced in the February Contract;
  - c. Omitting to disclose that the IRS filed tax liens against McClelland on November 28, 2005 and January 30, 2006 that totaled \$6,591,880; and
  - d. Omitting to disclose that McClelland filed for Chapter 7 bankruptcy on July 20, 2006.

#### IV. CONCLUSIONS OF LAW

35. 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.
36. 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.

37. 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 a federal covered security, exempt from registration, or registered.
38. Pursuant to S.C. Code Ann. § 35-1-102(2), an “agent” includes an individual who represents an issuer in effecting or attempting to effect purchases or sales of the issuer’s securities.
39. Pursuant to S.C. Code Ann. § 35-1-102(17), “issuer” includes an individual that issues or proposes to issue a security.
40. Pursuant to S.C. Code Ann. § 35-1-402(a), it is unlawful for an individual to transact business in this State as an agent unless that individual is registered or exempt from registration.
41. Pursuant to S.C. Code Ann. § 35-1-402(d), it is unlawful for a broker-dealer, or 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 broker-dealers or issuers unless the agent is registered or exempt from registration.
42. Pursuant to S.C. Code Ann. § 35-1-501, it is unlawful for a person, in connection with the offer, sale, or purchase of a security, directly or indirectly (1) to employ a device, scheme, or artifice to defraud; (2) to make an 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 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.

43. The interest in the Gemstones as offered and sold by the Respondents constitutes an investment contract and is therefore a security as defined by the Act.
44. The February Contract as offered by the Respondents constitutes an investment contract and is therefore a security as defined by the Act.
45. The securities offered and sold by the Respondents were not federal covered securities, exempt from registration, nor registered with the United States Securities and Exchange Commission or the Division and were therefore offered and sold in violation of S.C. Code Ann. § 35-1-301.
46. Respondent McClelland, on at least one occasion, transacted business in this State as an unregistered agent.
47. Respondent Miller, on at least one occasion, transacted business in this State as an unregistered agent.
48. Respondent MFI, on at least one occasion, employed or associated with an unregistered agent who transacted business on behalf of MFI while that agent was not registered.
49. The Respondents, on at least one occasion and in connection with the offer, sale, or purchase of a security, directly or indirectly (1) employed a device, scheme, or artifice to defraud; (2) made an untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or (3) engaged in an act, practice, or course of business that operated or would operate as a fraud or deceit upon another person, in violation of S.C. Code Ann. § 35-1-501.
50. 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 appropriate civil penalties 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. Respondent MFI of Georgia, Inc., and every successor, affiliate, control person, agent, servant, and employee of MFI, and every entity owned, operated, or indirectly or directly controlled by or on behalf of MFI **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;
- b. Respondent Gregory Dale McClelland **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;
- c. Respondent Frederick Dale Miller **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;
- d. Respondent MFI of Georgia, Inc. pay a civil penalty in the amount of twenty-five thousand dollars (\$25,000) if this Order becomes effective by operation of law, or, if MFI seeks a hearing and 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 MFI, and the actual cost of investigation or proceeding;
- e. Respondent Gregory Dale McClelland pay a civil penalty in the amount of twenty-five thousand dollars (\$25,000) if this Order becomes effective by operation of law,

or, if McClelland 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 McClelland, and the actual cost of investigation or proceeding; and

- f. Respondent Frederick Dale Miller pay a civil penalty in the amount of twenty-five thousand dollars (\$25,000) if this Order becomes effective by operation of law, or, if Miller 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 Miller, and the actual cost of investigation or proceeding.

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

Each 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 a 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 that 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 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 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 12<sup>th</sup> day of March, 2015.

ALAN WILSON  
SECURITIES COMMISSIONER

By: Tracy Meyers  
TRACY A. MEYERS  
Deputy Securities Commissioner

**ISSUANCE REQUESTED BY:**



TAYLOR FAW  
Assistant Attorney General  
Securities Division  
Rembert C. Dennis Building  
1000 Assembly Street  
Columbia, South Carolina 29201

STATE OF SOUTH CAROLINA  
OFFICE OF THE ATTORNEY GENERAL  
SECURITIES DIVISION

CERTIFICATE OF SERVICE AND  
AFFIDAVIT OF COMPLIANCE  
File Number 12018

I hereby certify that I served upon the individual/entity listed below a copy of the document indicated below and dated March 12, 2015, 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. Gregory McClelland  
309 Kings Drive  
Myrtle Beach, SC 29588

Certified Article Number

9314 7699 0430 0011 3306 36

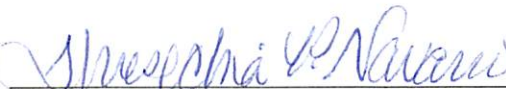
SENDERS RECORD

Document(s): Order to Cease and Desist

Mailed March 13, 2015 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 12 day of March, 2015.

  
Notary Public for South Carolina

My commission expires: 7/2/18

STATE OF SOUTH CAROLINA  
OFFICE OF THE ATTORNEY GENERAL  
SECURITIES DIVISION

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Mr. Fredrick Dale Miller, II  
4271 Hibiscus Drive, Apt. 101  
Little River, SC 29566

**Certified Article Number**

7314 7699 0430 0011 3308 10

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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 12 day of March, 2015.

  
Notary Public for South Carolina

My commission expires: 7/2/18

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OFFICE OF THE ATTORNEY GENERAL  
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MFI of Georgia, Inc.  
4601 Greenbriar Drive  
Little River, SC 29566

**Certified Article Number**

9314 7699 0430 0011 3309 40

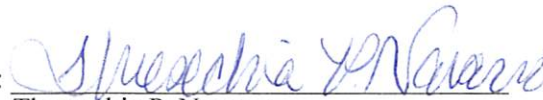
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South Carolina Attorney General's Office  
Securities Division  
Post Office Box 11549  
Columbia, SC 29211-1549  
(803) 734-4731

Subscribed and sworn to before me on  
this 12 day of March, 2015.



Notary Public for South Carolina

My commission expires: 7/2/16