BEFORE THE COMMISSIONER OF COMMERCE AND INSURANCE FOR THE STATE OF TENNESSEE

TENNESSEE SECURITIES DIVISION,	)	
Petitioner,	)	
	)	
v.	)	**No. 03-018**
	)	
EDGE BUSINESS SERVICES, INC., and	)	
WAYNE K. RICHARDSON,	)	
Respondents.	)	

ORDER TO CEASE AND DESIST

This Order issues as a result of a Petition and its exhibits attached hereto filed by the Tennessee Securities Division of the Department of Commerce and Insurance and is predicated upon the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. The Tennessee Securities Act of 1980, as amended, Tenn. Code Ann. §§ 48-2-101, *et seq.*, ("Act") assigns the responsibility for administration of the Act to the Commissioner of Commerce and Insurance ("Commissioner"). The Petitioner, the Tennessee Securities Division ("Division"), is the lawful agent through which the Commissioner administers the Act, and is authorized to bring this action for the protection of investors and the public. The Division's official residence and place of business is in Nashville, Davidson County, Tennessee.

2. The Act assigns the responsibility for its administration to the Commissioner. The Division, is the lawful agent through which the Commissioner administers the Act, and is authorized to bring this action for the protection of investors and the public. The Division's official residence and place of business is in Nashville, Davidson County, Tennessee.

3. Edge Business Services, Inc. ("EBS") was, at all times pertinent to the events described herein, a business entity with its principal place of business located at 8383 Wilshire Blvd., Beverly Hills, California 90211. EBS was a California corporation which listed Wayne Richardson as its agent for service of process. EBS has never been registered with the Division as a broker-dealer, investment adviser, or agent of a broker-dealer or investment adviser.

4. Wayne K. Richardson ("Richardson") was, at all times pertinent to the events described herein, a citizen and resident of the State of California whose home address was located at 600 North Curson, Los Angeles, California 90069. Richardson possesses Central Registration Depository number 1535910. Richardson has never been registered with the Division as a broker-dealer, investment adviser, or agent of a broker-dealer or investment adviser. Richardson was, at all times pertinent to the events described herein, the owner/president/chief executive officer of EBS.

5. In or about December 1998, Carson C. Driver, Jr., ("Driver") received an advertising pamphlet at his residence from EBS. The pamphlet from EBS described an investment opportunity in a "corporate note program."

6. The advertisement represented that investors could earn a return on their investments of twenty-nine point nine percent (29.9%) in less than five (5) years. The advertisement represented that the investment opportunity was "100 % Guaranteed & Insured."

7. The advertisement represented that investments in the "corporate note program" were "a unique opportunity to loan money to a corporation, and have the corporation collateralize the loan with specific current receivables, as well as a 100% financial guarantee bond issued by an insurance company."

8. The advertisement went on to state, in bold type, that "[a]s Little as $5,000 Will Return $18,493 in 5 Short Years" and that "IRA's and CE's Rollovers [are] Acceptable."

9. On or about December 7, 1998, Driver invested approximately ten thousand dollars ($10,000.00) with EBS. Richardson, through EBS, sent Driver a number of documents including a document ("Offering Document") which purported to detail how EBS and/or Richardson would use the proceeds from investments made with EBS and Richardson.

10. The Offering Document sent to Driver by EBS did not state what the business of EBS was but instead merely stated that the "bulk of the proceeds raised by EBS is Contract Fulfillment." Exhibit 2. The Offering Document did not define the term "Contract Fulfillment" but instead goes on to detail plans for marketing of EBS through direct-mail, print advertising, and the like.

11. On or about November 7, 2000, EBS and Richardson sent Driver a document entitled "Corporate Performance Note Statement" ("Statement"). The Statement indicated that the principle owed by EBS and Richardson to Driver was fourteen thousand nine hundred twenty-two dollars and nineteen cents ($14,922.19) and that the interest accumulated on Driver's principle as of the date of the Statement was eight hundred ten dollars and eighty-one cents ($810.81).

12. Another document sent to Driver by EBS was a document that detailed the performance and investment requirements for a "Corporate Performance Note" ("Note"). According to the document sent to Driver by EDS and/or Richardson, the minimum investment for an "Opening Account" with EBS for a Note was ten thousand dollars ($10,000.00).

13. The document sent to Driver that described the terms of a Note described in ¶ 12 above stated that its maturity date was three hundred sixty-four days from the date of issuance and that the interest rate on a Note was twenty-nine point nine percent (29.9%) "simple or fixed."

14. Another document sent to Driver by EBS and/or Richardson entitled "Corporate History" ("History") described EBS's business plan as to "aid" companies "with new technologies" in obtaining capital for business operation. The History represented that "EBS and its principle have a rich and full history in investments and private financing."

15. On or about January 26, 2001, Driver sent a letter to EBS and Richardson in which he detailed his various unsuccessful attempts to recover the investment of his principal from EBS and Richardson once his Note had "matured."

16. On or about August 31, 2001, EBS and Richardson sent a check postdated for November 16, 2001, to Driver in the amount of six thousand five hundred thirty-eight dollars ($6538.00). The check was drawn upon account number 122240764 of First Coastal Bank, N.A., in Marina Del Ray, California.

17. The check from EBS described in ¶ 16 above was accompanied by a note from Charlotte Jamison ("Jamison") who signed the note as EBS's "Client Services Manager." The note from Jamison stated that "there may be discrepancies with statements due to our system upgrade." *Id.*

18. The check sent to Driver that is described in ¶ 16-17 above was returned to Driver for insufficient funds. EBS and Richardson made no other attempts to return Driver's investment.

19. On or about August 28, 2000, Richardson pleaded no contest to one count of W.S.A. § 551.41 in the Circuit Court of Dane County, Wisconsin. Richardson was sentenced to three (3) years probation. As a condition of his parole, Richardson was required not to engage in any broker/dealer activity without a broker's license.

20. Richardson was sentenced on or about March 7, 2002, for violating the terms of his parole with respect to acting as a broker-dealer without a license. According to information received by the Division from the Wisconsin Division of Securities, Richardson served approximately six (6) months of his fifteen (15) month sentence and was released.

21. Upon information and belief, Richardson is wanted in California for criminal acts in connection with his sale of securities through EBS.

CONCLUSIONS OF LAW

22. Tenn. Code Ann. § 48-2-104 provides that:

> (a) It is unlawful for any person to sell any security in this state unless:
>
> (1) It is registered under this part;
> (2) The security or transaction is exempted under § 48-2-103; or
> (3) The security is a covered security.
>
> (b) The [C]ommissioner may, after notice and opportunity for a hearing under the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, impose a civil penalty against any person found to be in violation of this section, or any regulation, rule or order adopted or issued under this section, in an amount not to exceed ten thousand dollars ($10,000) per violation.

23. Tenn. Code Ann. § 48-2-102(16) provides that:

> "Security" means any note, stock, treasury stock, bond, debenture, evidence of indebtedness, a life settlement contract, as defined in § 56-50-102, or any fractional or pooled interest in a life insurance policy or life settlement contract, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, *investment contract*, voting-trust certificate, certificate of deposit for a security, certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease; or, in general, any interest or instrument commonly known as a "security," or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. . . .(emphasis added)

24. Tenn. Code Ann. § 48-2-102(16) provides that:

> "Security" means any note, stock, treasury stock, bond, debenture, evidence of indebtedness, a life settlement contract, as defined in § 56-50-102, or any fractional or pooled interest in a life insurance policy or life settlement contract, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, *investment contract*, voting-trust certificate, certificate of deposit for a security, certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease; or, in general, any interest or instrument commonly known as a "security," or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. . . .(emphasis added)

25. In *King v. Pope*, 91 S.W.3d 314, 321 (Tenn. 2002), the Tennessee Supreme Court held that an investment contract must satisfy the following four elements:

> (1) An offeree furnishes initial value to an offeror, and (2) a portion of this initial value is subjected to the risks of the enterprise, and (3) the furnishing of the initial value is induced by the offeror's promises or representations which give rise to a reasonable understanding that a valuable benefit of some kind, over and above the initial value, will accrue to the offeree as a result of the operation of the enterprise, and (4) the offeree does not receive the right to exercise practical and actual control over the managerial decisions of the enterprise.

26. The facts presented by the Division in this matter demonstrate that: (1) the contracts sold by the Respondents meet the definition of investment contracts as defined in *King*, 91 S.W.3d at 321, and are therefore securities under the Act, pursuant to Tenn. Code Ann. § 48-2-102(16); (2) that the Respondents have sold securities in Tennessee without first having registered such securities with the Division, as required by the Act; (3) that such securities are not subject to any exemptions under the Act; and (4) that such securities are not "covered" securities, as defined under the Act.

27. Tennessee Code Annotated § 48-2-102(3) defines a "broker-dealer" as any person engaged in the business of effecting transactions in securities for the account of others, or any person engaged in the business of buying or selling securities issued by one (1) or more other persons for such person's own account and as part of a regular business rather than in connection with such person's investment activities.

28. Tennessee Code Annotated § 48-2-102(2) defines an "agent" as any individual, other than a broker-dealer, who represents a broker-dealer in effecting or attempting to effect purchases or sales of securities from, in or into this state.

29. Tennessee Code Annotated § 48-2-109(a) provides, in pertinent part, that:

> (a) It is unlawful for any person to transact business from or in this state as a broker-dealer or agent unless such person is registered as a broker-dealer or agent under this part.
>
> . . .
>
> (e) The commissioner may, after notice and an opportunity for a hearing under the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, impose a fine against any person found to be in violation of this section, or any regulation, rule or order adopted or issued under this section, in an amount not to exceed ten thousand dollars ($10,000) per violation.

30. Tennessee Code Annotated § 48-2-121(a) provides that it is unlawful for any person, in connection with the offer, sale or purchase of any security in this state, directly or indirectly, to employ any device, scheme, or artifice to defraud, make any untrue statement of a material fact or 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, or engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person.

31. Based upon the Findings of Fact, the Respondents have violated and/or are violating Tenn. Code Ann. § 48-2-104(a) by selling unregistered securities in Tennessee which are not subject to an exemption and which are not covered securities, as defined in the Act.

32. Based upon the Findings of Fact, the Respondents have violated and/or are violating Tenn. Code Ann. § 48-2-109(a) by acting as an unregistered broker-dealer and/or investment adviser and/or agent thereof in Tennessee.

33. Based upon the Findings of Fact, the Respondents have violated and/or are violating Tenn. Code Ann. § 48-2-121(a) by making material misrepresentations and omissions of facts in connection with the offer and sale of securities in Tennessee.

34. Tenn. Code Ann. § 48-2-116 provides that the Commissioner may make, promulgate, amend, and rescind such Orders as are necessary to carry out the provisions of the Act, and that such Order is in the public interest, necessary for the protection of investors, and consistent with the purposes fairly intended by the policy and provisions of the Act.

35. Tenn. Code Ann. § 48-2-116(e)(2) provides that no Order may be entered without (1) prior notice to affected parties unless the Commissioner determines that prior notice would not be in the public interest and would be detrimental to the protection of investors, (2) an opportunity for a hearing before the Commissioner, and (3) written Findings of Fact and Conclusions of Law.

36. Based upon the Findings of Fact and Conclusions of Law described herein, it would not be in the public interest and would be detrimental to the protection of investors if prior notice of this Order were given to the affected parties.

NOW, THEREFORE, in consideration of the foregoing, it is **ORDERED** that:

1. The Respondents shall comply with all provisions of the Act.

2. The Respondents shall cease and desist in further conduct as a broker-dealer, investment adviser or agent thereof from, in, or into the State of Tennessee until such time as they are effectively registered with the Division to engage in such activity.

3. The Respondents shall cease and desist in further offerings and sales of securities from, in or into the State of Tennessee until such time as they have complied with all registration requirements under the Act and the rules and regulations promulgated thereunder.

4. The Respondents shall cease and desist further use of any device, scheme, or artifice to defraud, make any untrue statement of a material fact or 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, or engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person in the offer and/or sale of a security from, in or into this State.

5. All persons in any way assisting, aiding, or helping any of the aforementioned Respondents in any of the aforementioned violations of the Act shall cease and desist from all such activities in violation of the Act.

6. The Respondents shall, jointly and severally, pay a civil penalty to the Division in the amount of ten thousand dollars ($10,000.00) for their one (1) violation of Tenn. Code Ann. § 48-2-104.

7. The Respondents shall, jointly and severally, pay a civil penalty to the Division in the amount of ten thousand dollars ($10,000.00) for their one (1) violation of Tenn. Code Ann. § 48-2-109.

This Order is not intended to prohibit any lawful conduct in which the Respondents might be engaged.

Entry of this Order shall not in any way restrict the Tennessee Securities Division or the Commissioner of Commerce and Insurance from taking further action with respect to these or other possible violations by the Respondents of the Act or any of the Rules promulgated thereunder.

*This Order shall become a **Final Order** thirty (30) days from the date of its entry, unless written notification requesting a hearing is made by the parties within the thirty (30) day period.*

You are advised that you have the right to a hearing as to all matters raised in this Order. If you wish to exercise your right to a hearing, please notify:

DAPHNE D. SMITH
ASSISTANT COMMISSIONER FOR SECURITIES
STATE OF TENNESSEE, DEPARTMENT OF COMMERCE AND INSURANCE
DAVY CROCKETT TOWER, SUITE 680
500 JAMES ROBERTSON PARKWAY
NASHVILLE, TENNESSEE 37243

Such request must be received within thirty (30) days of the date of entry of this Order.

ENTERED this the 21st day of July, 2003.

Paula A. Flowers
Paula A. Flowers, Commissioner
Department of Commerce and Insurance

APPROVED FOR ENTRY:

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