

**BEFORE THE COMMISSIONER OF COMMERCE AND INSURANCE
OF THE STATE OF TENNESSEE AT NASHVILLE**

TENNESSEE SECURITIES DIVISION,)
 Petitioner)
)
vs.)
)
UPPER CUMBERLAND MEDIA GROUP INC.,)
DON NAPIER,)
PAULETTE MAYNARD,)
KELLY T. KEISLING, and)
EVERETT H. ASBERRY,)
 Respondents)

Order No. 04-005

CONSENT ORDER

The Tennessee Securities Division ("Division"), and Upper Cumberland Media Groups, Inc., Don Napier, Paulette Maynard, Kelly T. Keisling, and Everett H. Asberry, Respondents herein, agree to the entry of this Consent Order in accordance with Tenn. Code Ann. § 48-2-116 of the Tennessee Securities Act of 1980, as amended, Tenn. Code Ann. § 48-2-101, et seq. ("Act"), which states that the Commissioner of Commerce and Insurance ("Commissioner") from time to time may make such orders as are necessary to carry out the provisions of the Act.

GENERAL STIPULATIONS

1. It is expressly understood that this Consent Order is subject to the Commissioner's acceptance and has no force and effect until such acceptance is evidenced by the entry of the Commissioner.

2. This Consent Order is executed by the Respondents for the purpose of avoiding further administrative action with respect to this cause. Furthermore, should this Consent Order not be accepted by the Commissioner, it is agreed that presentation to and consideration of this Consent Order by the Commissioner shall not unfairly or illegally prejudice the Commissioner from further participation or resolution of these proceedings.

3. Respondents fully understand that this Consent Order will in no way preclude additional proceedings by the Commissioner against the Respondent for acts or omissions not specifically addressed in this Consent Order for facts and/or omissions that do not arise from the facts or transactions herein addressed.

4. Respondents expressly waive all further procedural steps, and expressly waive all rights to seek judicial review of or to otherwise challenge or contest the validity of the Consent Order, the stipulations and imposition of discipline contained herein, and the consideration and entry of said Consent Order by the Commissioner.

FINDINGS OF FACT

1. The Tennessee Securities Act of 1980, as amended, Tenn. Code Ann. § 48-2-101, et seq. (the "Act"), places the responsibility for the administration of the Act on the Commissioner of Commerce and Insurance ("Commissioner"). The Division is the lawful agent through which the Commissioner discharges this responsibility. Tenn. Code Ann. § 48-2-115.

2. Respondent, Upper Cumberland Media Group, Inc. (hereinafter referred to as "UCMG"), is a Tennessee corporation located in Byrdstown, Tennessee, which corporation was chartered on April 14, 2003. UCMG maintains an address at 1042 Cordell Hull, Memorial Drive, Byrdstown, TN 38549. Kelly Keisling is the registered agent for UCMG.

UCMG has never been registered as a broker-dealer, agent of a broker-dealer, or investment adviser with the Division pursuant to the Act.

3. Don Napier (hereinafter referred to as "Napier") is an employee, agent, officer, director, owner or other affiliated person of UCMG, with his business address being c/o Upper Cumberland Media Group, Inc., 1042 Cordell Hull, Memorial Drive, Byrdstown, TN 38549. Napier is not registered with the Division as a broker-dealer, an agent of a broker-dealer, or investment adviser pursuant to the Act.

4. Paulette Maynard (hereinafter referred to as "Maynard") is an employee, agent, officer, director, owner or other affiliated person of UCMG, with her business address being c/o Dale Hollow HORIZON, 510 W. Main St., Byrdstown, TN 38549. Maynard is not registered with the Division as a broker-dealer, an agent of a broker-dealer, or investment adviser pursuant to the Act.

5. Kelly T. Keisling (hereinafter referred to as "Keisling") is an employee, agent, officer, director, owner or other affiliated person of UCMG, with his business address being c/o Upper Cumberland Media Group, Inc., 1042 Cordell Hull, Memorial Drive, Byrdstown, TN 38549. Keisling is not registered with the Division as a broker-dealer, an agent of a broker-dealer, or investment adviser pursuant to the Act. Keisling does maintain Tennessee insurance license #333867.

6. Everett H. Asberry (hereinafter referred to as "Asberry") is an employee, agent, officer, director, owner or other affiliated person of UCMG, with his address being 525 N. Main St., Byrdstown, TN 38549. Asberry is not registered with the Division as a broker-dealer, as an agent of a broker-dealer, or investment adviser pursuant to the Act.

7. On or about July, 2003, it was brought to the attention of the Division that

UCMG had been raising capital by selling shares of stock.

8. Investigation revealed that Don Napier was holding meetings on behalf of UCMG in order to generate interest in creating a newspaper in Pickett County, Tennessee.

9. The investigator further learned that UCMG was chartered by the Tennessee Secretary of State on April 14, 2003 by Keisling, who was also listed at the registered agent for UCMG. Asberry is listed as an incorporator according to documents filed with the Secretary of State. Asberry is the President of UCMG.

10. On or about July 23, 2003, the *Dale Hollow HORIZON*, a local newspaper in Byrdstown, Tennessee, ran an advertisement for the sale of stock in UCMG. UCMG is the parent company of the *Dale Hollow HORIZON*. The advertisement states that UCMG is announcing "the availability of shares for purchase."

11. The advertisement further provides that "[s]hares are still available at \$10 a share with 100 shares being the minimum amount to purchase." The advertisement also provides that "[s]hares will be available at this purchase price until August 20, 2003, at which time, shares will go up to \$12.50 a share with minimum remaining at 100."

12. The advertisement provided that interested parties were to contact Paulette Maynard at the *Dale Hollow HORIZON* or stop by the editorial offices for additional information.

13. Further investigation revealed that 6800 shares of stock had been sold to 28 subscribers. The total investment was \$66,000.

14. No securities offering related to UCMG stock has been registered with the Division.

CONCLUSIONS OF LAW

15. Pursuant to Tenn. Code Ann. §48-2-115(a), the responsibility for administration of the Act is upon the Commissioner. The Division is the lawful agent through which the Commissioner discharges this responsibility.

16. Tennessee Code Annotated §48-2-109(a) provides that it is unlawful for any person to transact business from or in this state as a broker-dealer, agent of a broker-dealer, or investment adviser unless such person is registered as a broker-dealer, agent of a broker-dealer, or investment adviser under this part.

17. Tennessee Code Annotated §48-2-109(b) provides that it is unlawful for any broker-dealer to employ an agent to transact business as an agent unless the agent is registered under this part.

18. Tennessee Code Annotated §48-2-104(a) provides that it is unlawful for any person to sell any security in this state unless (1) it is registered, (2) the security or transaction is exempted under Tenn. Code Ann. §48-2-103, or (3) the security is a covered security.

19. The averments in paragraphs two - fourteen of this Consent Order, constitute practices by UCMG which would provide grounds under Tenn. Code Ann. § 48-2-104 for the entry of an order of sanctions against UCMG.

20. The averments in paragraphs two - fourteen of this Consent Order, constitute practices by Napier which would provide grounds under Tenn. Code Ann. § 48-2-109 for the entry of an order of sanctions against Napier.

21. The averments in paragraphs two - fourteen of this Consent Order, constitute practices by Napier which would provide grounds under Tenn. Code Ann. § 48-2-104 for the entry of an order of sanctions against Napier.

22. The averments in paragraphs two - fourteen of this Consent Order, constitute practices by Maynard which would provide grounds under Tenn. Code Ann. § 48-2-109 for the entry of an order of sanctions against Maynard.

23. The averments in paragraphs two - fourteen of this Consent Order, constitute practices by Maynard which would provide grounds under Tenn. Code Ann. § 48-2-104 for the entry of an order of sanctions against Maynard.

24. The averments in paragraphs two - fourteen of this Consent Order, constitute practices by Keisling which would provide grounds under Tenn. Code Ann. § 48-2-109 for the entry of an order of sanctions against Keisling.

25. The averments in paragraphs two - fourteen of this Consent Order, constitute practices by Keisling which would provide grounds under Tenn. Code Ann. § 48-2-104 for the entry of an order of sanctions against Keisling.

26. The averments in paragraphs two - fourteen of this Consent Order, constitute practices by Asberry which would provide grounds under Tenn. Code Ann. § 48-2-109 for the entry of an order of sanctions against Asberry.

27. The averments in paragraphs two - fourteen of this Consent Order, constitute practices by Asberry which would provide grounds under Tenn. Code Ann. § 48-2-104 for the entry of an order of sanctions against Asberry.

ORDER

NOW, THEREFORE, on the basis of the foregoing, and the Respondents' waiver of right to a hearing and appeal under the Tennessee Securities Act and Tennessee's Uniform Administrative Procedures Act, Tenn. Code Ann. § 4-5-101 et seq., and the Respondents' admission of jurisdiction of the Commissioner, the Commissioner finds that Respondents, Upper Cumberland Media Group, Inc., by and through its President, Everett H. Asberry, Don Napier, Paulette Maynard, Kelly T. Keisling, and Everett H. Asberry, for the purpose of settling this matter, admit the matters herein, have agreed to the entry of this Order and that the following Order is appropriate, in the public interest and necessary for the protection of investors.

IT IS ORDERED, pursuant to Tennessee Code Annotated §48-2-116(a) of the Tennessee Securities Act that:

1. Respondents shall fully comply with the Tennessee Securities Act, as amended, and all rules promulgated thereunder;
2. Respondents, Don Napier, Paulette Maynard, Kelly T. Keisling, and Everett H. Asberry, shall cease and desist in the further conduct as broker-dealers and agents of a broker-dealer from or in the State of Tennessee until such time as the Respondent so acting is effectively registered with the Division to engage in such activity.
3. The Respondents, Upper Cumberland Media Group, Inc., Don Napier, Paulette Maynard, Kelly T. Keisling, and Everett H. Asberry, shall cease and desist issuance, offer to sell, or sale of unregistered securities, including specifically any UCMG

stock, from or in the State of Tennessee until such time each is effectively registered with the Division or is exempt from such registration pursuant to the Act.

4. The Respondents agree that should any Respondent seek registration with the Division as a broker-dealer, agent of a broker-dealer, investment adviser, or agent of an investment adviser, such Respondent shall state on Form U-4 this action, pursuant to the instructions of said form and as required by the NASD, and file the appropriate Disclosure Reporting Page to disclose the details of this filed administrative action.

5. Respondents, Upper Cumberland Media Group, Inc., Don Napier, Paulette Maynard, Kelly T. Keisling, and Everett H. Asberry, jointly and severally, are hereby **ASSESSED** a civil penalty in the amount of eleven thousand two-hundred dollars (\$11,200.00). Said sum shall be due and paid in full upon execution of this document, but in no event later than May 14, 2004. Payment shall be mailed to:

State of Tennessee
Department of Commerce and Insurance
Securities Division
Attention: Michele K. Elliott, Staff Attorney
500 James Robertson Parkway, 5th Floor
Nashville, Tennessee 37243.

6. Respondents, UCMG, Inc., shall make an offer rescission to all investors/purchasers of UCMG stock. In conjunction with the rescission offer, UCMG, Inc. shall pay a refund of all monies invested in the above-named stock to any investor so requesting within 60 days of said request.

In conjunction with the rescission offer, UCMG, Inc. shall provide a copy of the rescission letter for approval prior to it being sent. Any rescission letter shall comply with the Blue Sky Policy for Tennessee Rescission Offers. UCMG shall provide a complete list

of names and addresses for all those to whom the rescission letter shall be sent. UCMG shall provide a copy of any written responses to the rescission letter, as well as proof of compliance with any refund requests for each investor. It is ordered that the rescission letter shall be mailed, via certified mail, return receipt requested, to the last known address of each stockholder no later than June 1, 2004.

Respondents agree that failure to comply with and complete the rescission process shall result in the permanent denial of any application by Respondents for any type of registration with the Division of Securities and/or with the Department of Commerce and Insurance.

7. Respondents hereby agree and acknowledge that failure to comply with all of the requirements and prohibitions contained in this Order shall result in the denial of any application by Respondents for registration with the Division of Securities and/or with the Department of Commerce and Insurance.

IT IS ORDERED that this Order represents the complete and final resolution of, and discharge with respect to all administrative and civil, claims, demands, actions and causes of action by the Commissioner against Upper Cumberland Media Group, Inc., Don Napier, Paulette Maynard, Kelly T. Keisling, and Everett H. Asberry for violations of the Act alleged by the Tennessee Securities Division to have occurred with respect to transactions and the facts contained herein.

This Consent Order is in the public interest and in the best interests of the parties, and represents a compromise and settlement of the controversy between the parties and is for settlement purposes only. By the signature affixed below, Upper Cumberland Media

Group, Inc., by and through its President, Everett H. Asberry, Don Napier, Paulette Maynard, Kelly T. Keisling, and Everett H. Asberry affirmatively state that each has freely agreed to the entry of this Consent Order, that each waives his or her right to a hearing on the matters underlying this Consent Order and to a review of the Findings of Fact and Conclusions of Law contained herein, and that no threats or promises of any kind have been made by the Commissioner, the Division, or any agent or representative thereof. The parties, by signing this Consent Order, affirmatively state their agreement to be bound by the terms of this Consent Order and aver that no promises or offers relating to the circumstances described herein, other than the terms of settlement set forth in this Consent Order, are binding upon them.

ENTERED this 4th day of June, 2004.

Paula A. Flowers

Paula A. Flowers, Commissioner
Department of Commerce and Insurance

APPROVED FOR ENTRY:

Everett H. Asberry

Everett H. Asberry, as President of
Upper Cumberland Media Group, Inc.

Daphne D. Smith

Daphne D. Smith,
Assistant Commissioner for Securities
Department of Commerce and Insurance

Everett H. Asberry

Everett H. Asberry, Individually

Michele K. Elliott

Michele K. Elliott (BPR#022618)
Staff Attorney
Department of Commerce and Insurance
500 James Robertson Parkway, Fifth Floor
Nashville, Tennessee 37243
(615) 741-2199

Don Napier

Don Napier, Individually

Paulette Maynard

Paulette Maynard, Individually

Kelly T. Keisling

Kelly T. Keisling, Individually

Kenneth Chadwell

Kenneth Chadwell (BPR# 018586)

Attorney for Respondents

Looney & Looney

156 Rector Avenue

Crossville, TN 38557

(931) 484-7569