VSTATE OF MICHIGAN
DEPARTMENT OF LABOR & ECONOMIC GROWTH
OFFICE OF FINANCIAL AND INSURANCE SERVICES

Before the Commissioner of the Office of Financial and Insurance Services

In the matter of:

Scott Machuta
Sterling Blackthorn, Inc.
308 Andre St.
Mt. Pleasant, MI 48858

Respondent
_____/

Issued and entered this
10th day of June 2004
by Linda A. Watters,
Commissioner

ORDER TO CEASE AND DESIST PURSUANT TO MCL 451.501(1)
ORDER TO CEASE AND DESIST PURSUANT TO MCL 451.501(2)
ORDER TO CEASE AND DESIST PURSUANT TO MCL 451.502(a)
ORDER TO CEASE AND DESIST PURSUANT TO MCL 451.502(c)
ORDER TO CEASE AND DESIST PURSUANT TO MCL 451.701(1)

I.
BACKGROUND

The staff of the Office of Financial and Insurance Services ("OFIS") alleges that the following facts are true and correct:

1. Scott Machuta ("Respondent") is a resident of Michigan.
2. Respondent is President/C.E.O. of Sterling Blackthorn, Inc. ("Respondent")
3. Sterling offered promissory notes to potential investors.
4. One of the ways Sterling advertised the promissory notes to potential investors was through a website. The URL of the site was www.sterlingblackthorn.com
5. The promissory notes advertised by Respondent promised 24% annual returns, monthly, quarterly, or annual payment options, the notes were callable upon demand and there were no penalties for early withdrawals.
6. On September 29, 2003 OFIS received a complaint from xxxxxxxxxxxxxxxx "Complainant") against Sterling.
7. Complainant resides in xxxxxxxxx, Iowa.
8. Complainant invested $5,000 in a promissory note with Respondent.
9. Complainant signed the agreement on April 20, 2002 and Respondent signed the promissory note on April 29, 2002.
10. According to the terms of the promissory note Respondent was to pay Complainant an annual interest rate of 24%.
11. Complainant was to receive $100 interest payments on a monthly basis for 36 months with the $5,000 principal repaid at the end of the 36 months.
12. Complainant only received four of the $100 interest payments.

13. Complainant contacted Respondent by telephone to inquire about the missing interest payments. Complainant alleges that Respondent stated the reason for the missing interest payments was that "he couldn't pay that much interest."
14. In December 2002 Complainant sent a certified letter to Respondent. In the letter Complainant informed Respondent she was exercising her right to withdraw her funds.
15. The letter was returned unopened to Complainant with the words "return to sender" stamped on it.
16. Complainant has not had her principle refunded or received any further interest payments from Respondent.
17. Respondent is not registered in the state of Michigan to conduct securities transactions.
18. Respondent has not provided any proof that the promissory notes offered were exempt from registration.

II.
ORDER TO CEASE AND DESIST

ORDER TO CEASE AND DESIST PURSUANT TO MCL 451.501(1)

Based on the investigation findings set forth in the background above,

19. The promissory notes issued by Respondent were intended to defraud investors such as Complainant.
20. Section 101(1) of the Michigan Uniform Securities Act, MCL 451.501(1) states that it is unlawful for any person in connection with the offer, sale, or purchase of any security, directly or indirectly to employ any device, scheme, or artifice to defraud.

21. IT IS THEREFORE ORDERED, Respondent shall immediately CEASE AND DESIST from selling or offering securities in the State of Michigan.

ORDER TO CEASE AND DESIST PURSUANT TO MCL 451.501(2)

22. Respondent did not pay interest payments nor did Respondent allow Complainant to withdraw the money she invested, as was stated in the terms of the promissory note.

23. Section 101(2) of the Michigan Uniform Securities Act MCL 451.501(2) states that it is unlawful to make any 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 are made, not misleading.

24. IT IS THEREFORE ORDERED, Respondent shall immediately CEASE AND DESIST from selling or offering securities in the State of Michigan.

ORDER TO CEASE AND DESIST PURSUANT TO MCL 451.502(a)

25. Respondent transacted business in the State of Michigan as a broker-dealer and is not registered as a broker-dealer under the Michigan Uniform Securities Act.

26. Section 201(a) of the Michigan Uniform Securities Act MCL 451.502(a) states that a person shall not transact business in this state as a broker-dealer or agent unless registered under this act.

27. IT IS THEREFORE ORDERED, Respondent shall immediately CEASE AND DESIST from selling or offering securities in the State of Michigan.

ORDER TO CEASE AND DESIST PURSUANT TO MCL 451.502(c)

28. Respondent transacted business in the State of Michigan as an investment advisor without being registered under the act.

29. Section 202(c) of the Michigan Uniform Securities Act states in part, that a person shall not transact business in this state as an investment advisor unless the person is registered.

30. IT IS THEREFORE ORDERED, Respondent shall immediately CEASE AND DESIST from selling or offering securities in the State of Michigan.

ORDER TO CEASE AND DESIST PURSUANT TO MCL 451.701

31. Respondent offered unregistered securities in the State of Michigan. Neither the securities nor transactions were exempt from registration and the securities were not federally covered.

32. Section 301 of the Michigan Uniform Securities Act states that it is unlawful for any person to offer or sell any security unless the security is registered, the security or the transaction is exempted or the security is a federally covered security.

33. IT IS THEREFORE ORDERED, Respondent shall immediately CEASE AND DESIST from selling or offering securities in the State of Michigan.

34. You may contest this order by requesting a hearing before the Commissioner not later than 15 days after the order has been delivered or mailed to you.

35. The Administrator, within 15 days after your filing, shall issue a notice of hearing and set a date for a hearing. Any request for a hearing should be addressed to:

Office of Financial and Insurance Services
Attention: Hearing Coordinator
P.O. Box 30220
Lansing, MI 48909

36. If you do not request a hearing, or it is not ordered by the Administrator within 15 days, this order will stand as entered and will be FINAL. Any other Communication regarding this Order should be addressed to:

Office of Financial and Insurance Services
Attention: Laurence Wood
P.O. Box 30220
Lansing, MI 48909

37. The Commissioner of OFIS specifically retains jurisdiction of the matter contained herein to issue such further orders as the Commissioner deems just, necessary, or appropriate to assure compliance with the law and to protect the public interest.

By:_____
Linda A. Watters, Commissioner

Date: _____

III.
APPLICABLE LAWS

451.501 Offer, sale, or purchase of security; unlawful practices.

Sec. 101.

It is unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly:

(1) To employ any device, scheme, or artifice to defraud.

(2) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading.

(3) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

History: 1964, Act 265, Eff. Jan. 1, 1965 ;--Am. 1975, Act 31, Imd. Eff. May 1, 1975 ;--Am. 2000, Act 494, Imd. Eff. Jan. 11, 2001 .

Compiler's Note: For transfer of powers and duties of the corporation and securities bureau from the department of commerce to the director of the department of consumer and industry services, see E.R.O. No. 1996-2, compiled at § 445.2001 of the Michigan Compiled Laws. For transfer of statutory authority, powers, duties, and functions of the securities administrator to the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at § 445.2003 of the Michigan compiled laws. V

Transfer of Power: See § 16.335.

451.502 Investment adviser; unlawful practices.

Sec. 102.

(a) Except as otherwise provided in this subsection, an investment adviser, a federally covered adviser, or a person who represents an investment adviser or a federally covered adviser shall not, directly or indirectly, do any of the following:

(1) Employ a device, scheme, or artifice to defraud a client or prospective client.

(2) Engage in an act, practice, or course of business that operates or could operate as a fraud or deceit upon a client or prospective client.

(3) Acting as principal for his or her own account, knowingly sell any security or purchase any security from an investment advisory client, or acting as a broker for a person other than that client, knowingly effect any sale or purchase of any security for the account of that client, without disclosing to the client in writing before the completion of the transaction the capacity in which he or she is acting and obtaining the consent of the client in writing to the transaction. The prohibitions of this subdivision do not apply to a federally covered adviser or to any transaction with a customer of a broker-dealer if the broker-dealer is not acting as an adviser in relation to the transaction.

(b) It is unlawful for any investment adviser to enter into, extend, or renew any investment advisory contract unless it provides in writing all of the following:

(1) That the investment adviser shall not be compensated on the basis of a share of capital gains upon or capital appreciation of the funds or any portion of the funds of the client.
(2) That no assignment of the investment advisory contract may be made by the investment adviser without the consent of the other party to the contract.
(3) That the investment adviser, if a partnership, shall notify the other party to the investment advisory contract of any change in the membership of the partnership within a reasonable time after the change.
(c) It is unlawful for any investment adviser acting as a finder to do any of the following:
(1) Take possession of funds or securities in connection with the transaction for which payment is made for services as a finder.
(2) Fail to disclose clearly and conspicuously in writing to all persons involved in the transaction as a result of his or her finding activities before the sale or purchase that the person is acting as a finder, any payment for services as a finder, the method and amount of payment, as well as any beneficial interest, direct or indirect, of the finder or a member of the finder's immediate family in the issue of the securities that are the subject of services as a finder.
(3) Participate in the offer, purchase, or sale of a security in violation of section 301. However, if the investment adviser makes a reasonable effort to ascertain if a registration has been effected or an exemption order granted in this state or to ascertain the basis for an exemption claim and does not have knowledge that the proposed transaction would violate section 301, his or her activities as a finder do not violate section 301.
(4) Participate in the offer, purchase, or sale of a security without obtaining information relative to the risks of the transaction, the direct or indirect compensation to be received by promoters, partners, officers, directors, or their affiliates, the financial condition of the issuer, and the use of proceeds to be received from investors, or fail to read any offering materials obtained. This section does not require independent investigation or alteration of offering materials furnished to the finder.
(5) Fail to inform or otherwise ensure disclosure to all persons involved in the transaction as a result of his or her finding activities of any material information which the finder knows, or in the exercise of reasonable care should know based on the information furnished to him or her, is material in making an investment decision, until conclusion of the transaction.
(6) Locate, introduce, or refer persons that the finder knows, or after a reasonable inquiry should know, are not suitable investors by reason of their financial condition, age, experience, or need to diversify investments.
(d) The finder is not required to independently generate information.
(e) Unless waived by the administrator, an investment adviser registered or required to be registered under this act shall, in accordance with the provisions of this section, furnish each advisory client and prospective advisory client with a written disclosure statement in a form established by the administrator by rule or order. An investment adviser shall deliver the disclosure statement required by this section to a client or prospective client not less than 48 hours prior to entering into

an investment advisory contract with the client or prospective client, or at the time of entering into the investment advisory contract if the advisory client has a right to rescind the investment advisory contract without penalty within 5 business days of entering into the investment advisory contract.

(f) An investment adviser shall annually and without charge deliver or offer to deliver to each of its advisory clients the disclosure statement required by this section. Any disclosure statement required by this section and requested in writing by an advisory client pursuant to an offer to deliver must be mailed or delivered within 5 business days of the request. The delivery or offer to deliver required by this section need not be made to advisory clients receiving advisory services solely pursuant to a contract with an investment company registered pursuant to section 15(c) of the investment company act of 1940, 15 U.S.C. 80a-15.

(g) Subsection (b)(1) does not prohibit an investment advisory contract which provides for compensation based upon the total value of a fund averaged over a definite period, or as of definite dates, or taken as of a definite date, and does not apply to any person, except a trust, collective trust fund, or separate account referred to in section 3(c)(11) of the investment company act of 1940, 15 U.S.C. 80a-3, if the investment advisory contract relates to the investment of assets in excess of $1,000,000.00, and the investment advisory contract provides for compensation based on the asset value of the company or fund under management averaged over a specific period and increasing and decreasing proportionately with the investment performance of the company or fund over a specific period in relation to the investment record of an appropriate index of securities prices, or another measure of investment performance as the administrator by rule, regulation, or order may specify. For purposes of determining whether subsection (b)(1) applies to an investment advisory contract, the point from which increases and decreases in compensation are measured shall be the fee which is paid or earned when the investment performance of the company or fund is equivalent to that of the index or other measure of performance, and an index of securities prices shall be considered appropriate unless the administrator by order shall determine otherwise. The definition of the term “assignment” and the other terms used in this section shall be the same as the definitions of those terms in the investment advisers act of 1940.

(h) Unless the administrator by rule or order permits taking or having custody, it is unlawful for any investment adviser not registered as a broker-dealer to take or have custody of any securities or funds of any client.

(i) It is unlawful for an agent registered with a broker-dealer to conduct business as an investment adviser or an investment adviser representative except through the broker-dealer with which the agent is registered and with the written consent of the broker-dealer filed with the administrator, in a form and subject to terms and conditions acceptable to the administrator.

History: 1964, Act 265, Eff. Jan. 1, 1965 ;--Am. 1975, Act 31, Imd. Eff. May 1, 1975 ;--Am. 1978, Act 481, Eff. Mar. 30, 1979 ;--Am. 2000, Act 494, Imd. Eff. Jan. 11, 2001

451.701 Sale of securities; registration requirement.

Sec. 301.
It is unlawful for any person to offer or sell any security in this state unless 1 of the following is met:
(1) It is registered under this act.
(2) The security or transaction is exempted under section 402.
(3) The security is a federally covered security.
History: 1964, Act 265, Eff. Jan. 1, 1965 ;--Am. 2000, Act 494, Imd. Eff. Jan. 11, 2001 .

451.808 Cease and desist order; injunction, restraining order, order requiring accounting or disgorgement, or writ of mandamus; appointment of receiver or conservator; bond not required; hearing; decision; order denying or revoking exemption; remedies; commencement of action or proceeding.
Sec. 408.
(a) Whenever it appears to the administrator that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this act or any rule or order hereunder, it may in its discretion issue a cease and desist order or bring an action in a circuit court to enjoin the acts or practices and to enforce compliance with this act or any rule or order hereunder. Upon a proper showing a permanent or temporary injunction, restraining order, order requiring an accounting or disgorgement or writ of mandamus shall be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets. The court may not require the administrator to post a bond.
(b) A person who has been ordered to cease and desist may file with the administrator within 15 days after service on him or her of the order a written request for a hearing. The administrator within 15 days after the filing shall issue a notice of hearing and set a date for the hearing. If a hearing is not requested by the person or is not ordered by the administrator within 15 days, the order will stand as entered. The administrator shall hold the hearing in accordance with the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, as amended, being sections 24.201 to 24.328 of the Michigan Compiled Laws, and shall have all the powers granted thereunder. The administrator shall issue a decision sustaining, modifying, or dismissing the original order.
(c) The administrator, if it finds such action to be in the public interest and that any person has violated or is about to violate any provision of this act or any rule or order hereunder, may by order deny or revoke any exemption specified in section 402(a)(1), (6), (7), (8), (9), or (10) or section 402(b) with respect to a specific security, issuer or transaction, or a person's right to sell exempt securities or engage in exempt transactions in the future without compliance with the registration provisions of this act. The order shall list the individual exemptions revoked and the rationale for the revocation. An order may not be entered without appropriate prior notice to all interested parties, opportunity for hearing, and written findings of fact and conclusions of law, except that the administrator may by order summarily deny or revoke any of the specific exemptions pending final determination of a proceeding under this subsection. Upon the entry of a summary order the administrator shall promptly notify all interested parties that the order has been entered and the reasons therefor and that within 15 days after receipt of a written

request the matter will be set down for hearing. If a hearing is not requested within 15 days and none is ordered by the administrator, the order will remain in effect until it is modified or vacated by the administrator. If a hearing is requested or ordered, the administrator, after notice of an opportunity for hearing to all interested persons, may modify or vacate the order or extend it until final determination. An order under this subsection may operate retroactively. A person does not violate section 301 or 403 by reason of any offer or sale effected after the entry of an order under this subsection if that person sustains the burden of proof that he did not know, and in the exercise of reasonable care could not have known, of the order.

(d) None of the remedies provided for in this act are mutually exclusive and the administrator in its discretion may use as many remedies as it deems necessary. The administrator in seeking a remedy shall consider the present actions and the possibility of future violations by the parties against whom proceedings are contemplated, together with actions taken to mitigate harm to the public. The administrator may impose a civil penalty of not more than $1,000.00 for each violation of this act, not to exceed a total of $10,000.00.

(e) The administrator shall not commence any action or proceeding under this act more than 6 years after the violation.

History: 1964, Act 265, Eff. Jan. 1, 1965 ;--Am. 1978, Act 481, Eff. Mar. 30, 1979 ;--Am. 1988, Act 408, Imd. Eff. Dec. 27, 1988 .

Admin Rule: R 451.601.1 et seq. of the Michigan Administrative Code.