

**STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
CORPORATIONS, SECURITIES & COMMERCIAL LICENSING BUREAU**

In the matter of:

Agency No. 332928

VICTORY H2O DISTRIBUTION, LLC
Unregistered

Respondent.

_____ /

Issued and entered
This 18 day of December, 2017

NOTICE AND ORDER TO CEASE AND DESIST

Julia Dale, the Director of the Corporations, Securities & Commercial Licensing Bureau (the "Administrator"), pursuant to her statutory authority and responsibility to administer and enforce the Michigan Uniform Securities Act (2002), 2008 PA 551, as amended, MCL 451.2101 *et seq* ("Securities Act"), hereby orders Victory H2O Distribution, LLC ("Respondent") to cease and desist from offering and selling unregistered securities, and from misstating material facts or omitting to state material facts necessary in order to make other statements made not misleading in connection with the offer and sale of securities, contrary to the Securities Act. Respondent is notified of the opportunity to request a hearing in this matter.

I. BACKGROUND

A. The Respondent

1. Respondent Victory H2O Distribution, LLC is a Michigan-organized limited liability company. Respondent is not registered in any capacity under the Securities Act, nor has it registered any securities products under the Securities Act.

1. Findings of Fact

1. The Bureau received information that Respondent may have offered and sold investment contract securities from within the State of Michigan to an investor in the State of Georgia; an investigation was opened to review Respondent's activities under the Securities Act.
2. The Bureau's investigation developed evidence that Respondent offered and sold an investment contract security to CC, a resident of the State of Georgia. The investment contract was not registered and Respondent has not identified a relevant exemption from registration.
4. Investor CC invested \$15,000 with Respondent with the understanding that CC and Respondent would share proceeds of sales of Respondent's product, a hydration beverage; that CC would receive at least double her investment – a return of \$30,000; and, that CC would have no control over the business enterprise.
5. Respondent promised CC a return of double her investment within 60 days of the investment, but failed to identify any risk that the investment may become a total loss, which it ultimately did. A reasonable investor might consider the risk of total loss to be important to his or her investment decision.
6. Respondent represented that it would distribute its product through multiple well-known retailers, but failed to disclose that it may not have agreements or be able to reach agreements with those retailers, which would impair Respondent's ability to pay promised returns on CC's investment. A reasonable investor might have considered the inability to secure distribution contracts with retailers to be important to his or her investment decision.

II. RELEVANT STATUTORY PROVISIONS

1. Section 102(c) of the Securities Act defines "Security", in part, as:

a note; stock; treasury stock; security future; bond; debenture; evidence of indebtedness; certificate of interest or participation in a profit-sharing agreement; collateral trust certificate; preorganization certificate or subscription; transferable share; investment contract; voting trust certificate; certificate of deposit for a security; fractional undivided interest in oil, gas, or other mineral rights; put, call, straddle, option, or privilege on a security, certificate of deposit, or group or index of securities, including an interest in or based on the value of that put, call, straddle, option, or privilege on that security, certificate of deposit, or group or index of securities, put, call, straddle, option, or privilege entered into on a national securities exchange

relating to foreign currency, an investment in a viatical or life settlement agreement; or, in general, an interest or instrument commonly known as a “security”; or a 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...

2. Section 301 of the Securities Act, MCL 451.2301, states:

A person shall not offer or sell a security in this state unless 1 or more of the following are met:

- (a) The security is a federal covered security.
- (b) The security, transaction, or offer is exempted from registration under section 201 to 203.
- (c) The security is registered under this act.

3. Section 501 of the Securities Act, MCL 451.2501, states:

It is unlawful for a person, in connection with the offer, sale, or purchase of a security or the organization or operation of a Michigan investment market under article 4A, to directly or indirectly do any of the following:...

- (b) Make an untrue statement of a material^[1] fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading...

4. Section 503(1) of the Securities Act, MCL 451.2503(1), states:

In a civil action or administrative proceeding under this act, a person claiming an exemption, exception, preemption, or exclusion has the burden to prove the applicability of the exemption, exception, preemption, or exclusions.

III. CONCLUSIONS OF LAW

1. Respondent Victory H2O Distribution, LLC offered and sold an investment contract security to CC which was not federally covered, exempt from registration, or registered, contrary to section 301 of the Securities Act, MCL 451.2301.
2. Respondent Victory H2O Distribution, LLC promised substantial investment returns to CC, but failed to disclose that the investment might end up as an entire

[¹ A “material” fact is one that a reasonable investor might consider important to his or her investment decision. *People v Cook*, 89 Mich App 72 (1979).]

loss, which ultimately occurred. A reasonable investor might consider it important to his or her investment decision to know that a substantial promised rate of return may not occur at all, but rather that the investment might become a total loss. The statements regarding risks of loss were material, necessary to make the statement regarding the promised rate of return not misleading, and were omitted, contrary to section 501 of the Securities Act, MCL 451.2501.

3. Respondent Victory H2O Distribution, LLC represented to CC that it had or would have agreements with well-known retailers to distribute its product, but failed to disclose that it either did not have, or may be unable to obtain the contracts necessary to distribute the product in a sufficient manner to generate revenues to pay the promised investments returns. The statements regarding the inability to secure retail distribution were material, necessary to make the statements regarding future retail distribution not misleading, and were omitted, contrary to section 501 of the Securities Act, MCL 451.2501.

IV. ORDER

IT IS THEREFORE ORDERED, pursuant to section 604 of the Securities Act, MCL 451.2604, that:

- A. Respondent shall immediately CEASE AND DESIST from offering and selling unregistered securities, and from omitting material facts necessary to make other statements made not misleading in connection with the offer and sale of securities, contrary to the Securities Act.
- B. Pursuant to section 604(2) of the Securities Act, this Notice and Order to Cease and Desist is IMMEDIATELY EFFECTIVE.
- C. In her Final Order, the Administrator, under section 604(4) of the Securities Act, MCL 451.2604(4), intends to impose a civil fine of \$30,000.00 against Respondent.
- D. Pursuant to section 508 of the Securities Act, MCL 451.2508, a person that willfully violates the Securities Act, or an order issued under the Securities Act, is guilty of a felony punishable by imprisonment for not more than 10 years or a fine of not more than \$500,000.00 for each violation, or both. An individual convicted of violating a rule or order under this act may be fined, but shall not be imprisoned, if the individual did not have knowledge of the rule or order.

V. NOTICE OF OPPORTUNITY FOR HEARING

Section 604 of the Securities Act, MCL 451.2604, provides that Respondent has 30 days beginning with the first day after the date of service of this Notice and Order to Cease

and Desist to submit a written request to the Administrator asking that this matter be scheduled for a hearing. If the Administrator receives a written request in a timely manner, the Administrator shall schedule a hearing within 15 days after receipt of the request. The written request for a hearing must be addressed to:

Corporations, Securities & Commercial Licensing Bureau
Regulatory Compliance Division
P.O. Box 30018
Lansing, MI 48909

VI. ORDER FINAL ABSENT HEARING REQUEST

- A. Under section 604 of the Securities Act, MCL 451.2604, the Respondent's failure to submit a written request for a hearing to the Administrator within 30 days after the service date of this **NOTICE AND ORDER TO CEASE AND DESIST** shall result in this order becoming a **FINAL ORDER** by operation of law. The **FINAL ORDER** includes the imposition of the fines cited described in section IV.C., and the fine amounts set forth below will become due and payable to the Administrator within sixty (60) days after the date this order becomes final:

\$30,000.00 – Victory H2O Distribution, LLC, under
section 604 of the Securities Act, MCL 451.2604.

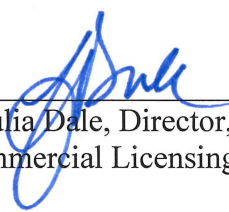
- B. CIVIL FINE payments should be payable to the STATE OF MICHIGAN and contain identifying information (e.g., names and complaint numbers) and mailed to the following address:

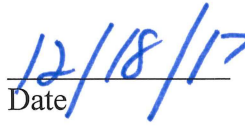
Corporations, Securities & Commercial Licensing Bureau
Final Order Monitoring
P.O. Box 30018
Lansing, MI 48909

- C. Failure to comply with the terms of this Order within the time frames specified may result in additional administrative penalties, including the summary suspension or continued suspension of all registrations held by Respondent under the Securities Act, the denial of any registration renewal, and/or the denial of any future applications for registration, until full compliance is made. Respondent may voluntarily surrender or withdraw a registration under the Securities Act; however, the surrender or withdrawal will not negate the summary suspension or continued suspension of the relevant registrations or any additional administrative proceedings if a violation of this Order or the Securities Act occurred.
- D. Failure to pay the civil fines within six (6) months after this Order becomes final may result in the referral of the civil fines to the Michigan Department of Treasury for collection action against Respondents.

Notice & Order to Cease & Desist
Victory H2O Distribution, LLC (CN 332928)

DEPARTMENT OF LICENSING & REGULATORY AFFAIRS
CORPORATIONS, SECURITIES & COMMERCIAL LICENSING BUREAU


By: Julia Dale, Director, Corporations, Securities
& Commercial Licensing Bureau


Date