

1 **STATE OF WASHINGTON**
2 **DEPARTMENT OF FINANCIAL INSTITUTIONS**
3 **SECURITIES DIVISION**

4 IN THE MATTER OF DETERMINING
5 whether there has been a violation
6 of the Securities Act of Washington by:

7 MICHAEL DEVINE;
8 INTERNATIONAL CONSULTING LLC;
9 DOWN UNDER SEAFOODS LLC;
10 KIMBERLEY INVESTMENTS, INC.,

11 Respondents.

Order Number S-08-045-09-FO01

ENTRY OF FINDINGS OF FACT AND
CONCLUSIONS OF LAW AND FINAL
ORDER TO CEASE AND DESIST, IMPOSE
FINES, AND RECOVER COSTS

12 THE STATE OF WASHINGTON TO:

13 Michael Devine
14 International Consulting LLC
15 Down Under Seafoods LLC
16 Kimberley Investments, Inc.

17 On December 9, 2008, the Securities Administrator of the State of Washington issued Statement of
18 Charges and Notice of Intent to Enter an Order to Cease and Desist, Impose Fines, and Recover Costs,
19 hereinafter referred to as "Statement of Charges," against Michael Devine, International Consulting LLC,
20 Down Under Seafoods LLC, and Kimberley Investments, Inc.

21 The Statement of Charges, together with a Notice of Opportunity to Defend and Opportunity for
22 Hearing, hereinafter referred to as "Notice of Opportunity for Hearing," and an Application for
23 Adjudicative Hearing, hereinafter referred to as "Application for Hearing," were personally served on
24 Michael Devine, individually and as officer of International Consulting LLC, Down Under Seafoods LLC,
and Kimberley Investments, Inc., on December 13, 2008.

The Notice of Opportunity for Hearing advised Michael Devine, International Consulting LLC,
Down Under Seafoods LLC, and Kimberley Investments, Inc. that a written application for an

1 administrative hearing on the Statement of Charges must be received within twenty days from the date of
2 receipt of the notice. Michael Devine, International Consulting LLC, Down Under Seafoods LLC, and
3 Kimberley Investments, Inc. each failed to request an administrative hearing within 20 days of receipt of
4 the Statement of Charges and Notice of Opportunity for Hearing, either on the Application for Hearing
5 provided or otherwise.

6 The Securities Administrator therefore will adopt as final the findings of fact and conclusions of
7 law as set forth in the Statement of Charges.

8 The Securities Administrator makes the following findings of fact and conclusions of law:

9 **FINDINGS OF FACT**

10 Respondents

11 1. Michael Devine (“Devine”), also known as Michael J. Devine or Michael John Devine, is a
12 Washington resident. His last known address is in Kirkland, Washington.

13 2. International Consulting LLC (“International Consulting”) is a Washington limited liability
14 company that was formed on April 12, 2005. The company was formed to procure iron ore rights. The
15 company was dissolved on August 1, 2006. Devine was manager and member of International Consulting.

16 3. Down Under Seafoods LLC (“Down Under Seafood”) is a Montana limited liability
17 company that was formed October 3, 2006. Down Under Seafoods LLC is also known as Down Under
18 Seafood LLC and Down Under Seafood Group. Down Under Seafood was formed to start a seafood store
19 and fish and chips franchise. Down Under Seafood was involuntarily dissolved by the Montana Secretary
20 of State on December 1, 2008 for failing to file an annual report for the current year. Devine was manager
21 and member of Down Under Seafood.

1 for Pearl Coast Marine Products because Devine purportedly did not have sufficient credit to open a
2 bank account.

3 8. The Pearl Coast Marine Products partnership fell apart by November 2004. No seafood
4 transactions had been completed. The Washington resident requested return of his money, but did not
5 receive it.

6 9. Michael Divine formed a Washington limited liability company called Pearl Coast
7 Marine Products LLC on April 12, 2005. The company was dissolved on August 1, 2006.

8 International Consulting

9 *Investor A*

10 10. Investor A, a Washington resident, initially met Devine in 2004. In early 2005, Devine
11 approached Investor A with various business deals with which he wanted help. Investor A had never
12 invested in small businesses before. He was not an accredited or sophisticated investor.

13 11. Devine mentioned an iron ore investment as a possible side business venture. Devine
14 was working to have his company International Consulting LLC purchase mining rights from Adelaide
15 Resources Ltd. (“Adelaide Resources”), an Australian company that owned land in Australia with
16 supposedly confirmed iron ore deposits. Devine represented that his father owned a generator plant in
17 Beijing and had connections with a Chinese steel company called China Kingdom International.
18 Devine stated that his company International Consulting planned to purchase the mining rights for
19 \$140,000 and sell the rights to the Chinese steel company for \$46 million. International Consulting
20 would retain 51% of the rights and therefore would control logistics.

1 12. In January 2005, Investor A gave Devine \$5,000 to put towards this iron ore venture. At
2 Devine's request, Investor A wired the funds to the bank account for Pearl Coast Marine Products.
3 Devine represented that Pearl Coast Marine Products was a seafood shipping company that he owned.

4 13. Around this time, Devine supplied Investor A with a two page document describing an
5 investment opportunity in the "Warramboe Iron Ore Project." The document stated that investors
6 could have a return on their investment in 90 days. The document further stated than on offering
7 document would be available upon request.

8 14. On March 3, 2005, Investor A invested an additional \$30,000 with International
9 Consulting LLC. Devine promised a 6-to-1 return if the deal with the Chinese steel company was
10 completed. Devine signed a Letter of Guarantee in which he personally guaranteed the principal of
11 the investment and agreed to return Investor A's principal by June 1, 2005. Devine again requested
12 that Investor A wire the funds to the Pearl Coast Marine Products bank account though it was
13 understood the investment was with International Consulting.

14 15. Devine did not discuss the risks of the investment or provide offering or disclosure
15 information to Investor A. Because he had Devine's personal guarantee, Investor A did not believe
16 there was any risk to his principal.

17 16. Around this period of time, Devine told Investor A that International Consulting needed
18 to raise the \$140,000 by December 15, 2005 in order to purchase the rights.

19 17. Investor A contacted an old friend, Investor B, who Investor A knew might be interested
20 in business or investment projects. Devine then contacted Investor B by phone and email.

21 18. Devine informed Investor A that Investor B would not invest unless Investor A co-signed
22 a guarantee. Devine told Investor A that if he did not sign the guarantee, International Consulting

1 would not be able to raise the required funds in time. Investor A agreed to “co-sign” Investor B’s
2 guarantee. The “Guaranty Agreement” recites that Investor A, as guarantor, agrees to guarantee
3 Investor B’s \$50,000 principal. The “Guaranty Agreement” was signed by Michael Devine in his
4 individual capacity.

5 19. International Consulting did not purchase the iron ore rights. Devine did not make
6 payments under Investor A’s promissory note, nor return principal.

7 *Investor B*

8 20. Investor B, a Massachusetts resident, met Devine through Investor A. Investor B was
9 interested in business and investment opportunities but his investing experience was limited to
10 investing in publicly traded companies.

11 21. Devine contacted Investor B by telephone and email from his home in Kirkland,
12 Washington to discuss investing in an iron ore venture in Australia. Devine told Investor B that iron
13 ore deposits had been located in Australia on land owned by Adelaide Resources. Devine’s company
14 International Consulting planned to the secure mining rights for this iron ore. Once the rights were
15 secured, they could either be sold for profit or developed into a mining operation. Devine sought funds
16 so that International Consulting could purchase the rights.

17 22. Devine requested funds be wired to the bank account for Pearl Coast Marine Products
18 located at Bank of America in Kirkland, Washington. Devine explained that International Consulting
19 was such a new company he had not had time to set up a bank account for it. He assured Investor B
20 that the funds would be transferred to a bank account for International Consulting as soon as possible.

21 23. On April 15, 2005, Devine, as sole member of International Consulting LLC, signed a
22 \$50,000 “Non-Negotiable Promissory Note” in Seattle, Washington. Under the terms of the note,

1 Devine promised to pay Investor B his \$50,000 principal plus 50% annual interest, or \$62,500, by
2 October 14, 2005. On the same day, Devine signed a "Guaranty Agreement." The guarantee recites
3 that Investor A, as guarantor, guarantees Investor B's \$50,000 principal. The "Guaranty Agreement"
4 was signed by Michael Devine in his individual capacity. The documents were sent to Investor B.
5 Investor B then wired \$50,000 to the Pearl Coast Marine Products bank account.

6 24. Later in July or August 2005, Investor B agreed to invest additional money into the iron
7 ore venture in exchange for a membership interest in International Consulting. Devine told Investor B
8 that this would allow Investor B to participate in the profits from the iron ore venture. Investor B
9 wired \$38,000 directly to Adelaide Resources.

10 25. Devine did not discuss the risk of the investment with Investor B. Because he had the
11 personal guarantees of Devine and Investor A, Investor B did not believe there was any risk to his
12 principal.

13 26. Investor B did not receive payment on the promissory note. Investor B requested his
14 money back from Devine, but did not receive it. He was also informed by either Adelaide Resources
15 or Devine that Adelaide Resources would keep his \$38,000 as a default because International
16 Consulting had not raised the amount required to purchase the mining rights.

17 27. On March 13, 2006, Investor B filed a lawsuit in King County Superior Court against
18 Devine and Investor A. The matter went to arbitration which determined that Devine and Investor A
19 must pay Investor B \$88,547. Investor A paid the full amount. Devine paid nothing.

Investor C

28. Investor C is a mortgage broker and real estate investor living in Massachusetts. He met Devine through his business partner Investor B. Investor C did not have experience investing in small business ventures.

29. In approximately June 2005, Devine contacted Investor C by phone and email from Kirkland, Washington. Devine told Investor C that he needed funds for his company International Consulting LLC to pay expenses for an iron ore venture in Australia.

30. Devine told Investor C that the investment was a “sure thing” and offered a personal guarantee on the investment. Investor C was not told the risks of the venture or asked about his investing experience or sophistication. Because he had Devine’s personal guarantee, Investor C did not believe there was any risk to his principal.

31. Devine mailed paperwork to Investor C consisting of a promissory note and personal guarantee. On June 20, 2005, Devine signed a “Non-Negotiable Promissory Note” as sole member of International Consulting LLC. Under the terms of the note, Investor C would receive his \$35,000 principal plus 10% annual interest by August 22, 2008. Devine signed a separate “Guaranty Agreement” on June 26, 2005 in which personally guaranteed the principal of Investor C.

32. Devine requested that Investor C wire his \$35,000 to the bank account for Pearl Coast Marine Products because Devine had not yet set up an account for International Consulting. He promised he would set up such an account shortly.

33. After two months passed, Investor C did not receive any payment on the promissory note. He requested payment from Devine, who told Investor C by email and phone that he would pay

1 Investor C back. No payments of principal or interest were made. Investor C sued Devine in King
2 County Superior Court. Investor C received a default judgment for \$43,416 on July 12, 2006.

3 Down Under Seafood

4 *Investor D*

5 34. Investor D met Devine on an airline flight between Seattle and New Jersey in
6 approximately December 2006. At the time, Investor D was a Washington resident. Devine spent the
7 flight telling Investor D about his various businesses.

8 35. Devine stayed in contact with Investor D and soon brought up the possibility of Investor
9 D investing in a seafood business he was starting in Missoula, Montana. The seafood business was
10 called Down Under Seafood and would combine a fresh seafood store with a fish and chips restaurant.
11 Devine talked about franchising the business. He said he had almost a dozen investors in the business.

12 36. Devine initially asked for a short-term investment. On January 22, 2007, Devine signed a
13 “Non-Negotiable Promissory Note” in which “Down Under Seafood, LLC, a Washington limited
14 liability company” agreed to pay principal of \$30,000 plus 50% interest by May 22, 2007. Devine
15 signed this promissory note as the sole member of “Down Under Seafood Group.” A “Down Under
16 Seafoods LLC” was formed in Montana on October 3, 2006. However, there is no Washington limited
17 liability company operating under the name Down Under Seafood LLC or Down Under Seafood
18 Group. The promissory note stated that it was secured by a five percent equity interest in Down Under
19 Seafood LLC.

20 37. At Devine’s instruction, Investor D wired \$30,000 on January 23, 2007 to a bank account
21 for Blue Damsel Machinery LLC at Capital One. Blue Damsel Machinery LLC was a ship
22

1 reclamation company purportedly owned by Devine in Louisiana. However, Investor D's
2 understanding was that the investment was in Down Under Seafood.

3 38. Prior to the payment date of the promissory note, in or about April 2007, Devine offered
4 to convert Investor D's loan into an ownership interest in Down Under Seafood. This would allow
5 Invest D to receive a share of the profits of the business. Devine told Investor D that there was only a
6 short period of time in which Investor D could convert to an equity interest. This was because Down
7 Under Seafood was selling its first franchise store. Devine spoke of this sale as if it had already been
8 completed.

9 39. Following their conversation in which Devine offered the loan conversion, Devine sent a
10 document to Investor D which stated:

11 Down Under Seafood, LLC hereby agrees to convert loan 01 entered into January
12 15 2007 from [Investor D] into two points of ownership of Down Under Seafood,
13 LLC. Points are fully tradable [sic] as per the guidelines set by the board of
14 directors of the Down Under Seafood Group.

15 As per our conversation you are eligible [sic] to sell points held at the 40 k level.
16 The current market price of 40 k expires June 5, 2007. As the situation stands
17 today we have more investors than sellers leaving a sellers [sic] market. I would
18 be happy to assist you in the sale of your holding in Down Under Seafood's [sic]
19 if you choose to do so.

20 The document was signed by Michael Devine as President of Down Under Seafood Group. Investor
21 D understood the document to state that if he converted his loan to two points of ownership interest,
22 there was a ready market for him to sell the points for \$80,000 total until June 5, 2007. Investor D
23 agreed to the loan conversion.

24 40. On April 17, 2007, Devine emailed Investor D to recommend that Investor D hold his
position until the sale of the franchise store was completed; this would enable Investor D to receive
profits for the company. However, Investor D sent a letter to Devine on April 25, 2007 authorizing

1 Devine to sell two of his points for \$40,000 each. Devine responded by email that he would sell the
2 points immediately.

3 41. On or about May 3, 2007, Investor D wired \$50,000 to a bank account at US Bank
4 specified by Devine. In combination with the ownership points from the loan conversion, Investor D
5 would now have a 6% interest in Down Under Seafood.

6 42. Investor D did not receive the \$80,000 he was promised for sale of the ownership points
7 from the loan conversion. Devine told Investor D that the sale of the franchise store had fallen
8 through.

9 43. On or about June 22, 2007, Devine asked Investor D for a \$20,000 emergency loan to
10 cover short term expenses for the seafood business. Investor D agreed to loan \$20,000. At the time
11 Investor D transferred the funds, Devine gave Investor D a check for \$25,000 post dated July 9, 2007.
12 Investor D cashed the check on July 9, 2007, but the check bounced.

13 44. Investor D did not receive disclosure information or documents evidencing his ownership
14 interest in the seafood business. Investor D did not have previous experiencing investing in small
15 businesses or restaurants.

16 *Investor E*

17 45. Investor E is an architect and resident of Montana. His firm was hired to provide
18 architectural services for the construction of the Down Under Seafood store. Devine failed to pay for
19 the architectural services. When Investor E demanded payment from Devine, Devine offered Investor
20 E's firm two ownership points, or a 2% interest, in Down Under Seafood. Devine represented that the
21 points could be sold immediately for \$40,000 each.

1 46. Investor E reluctantly agreed to accept the points because he needed to pay the
2 consultants he had hired for Devine's project. He emailed Devine on June 6, 2007 requesting that
3 Devine sell one of the points. Devine replied on the same day and said Investor E would receive
4 payment from the sale of the point in 30 days.

5 47. Over the next 30 days, Investor E repeatedly requested documentation from Devine, such
6 as an assignment, which would confirm his firm's equity ownership in Down Under Seafood. He also
7 requested the Operating Agreement for the company. Devine told Investor E that he would receive a
8 confirmation from a law firm. Despite repeated requests, Investor E never received confirmation. He
9 also never received any payment from sale of his points.

10 48. Investor E sued Devine and received a judgment for approximately \$33,000.

11 *Investor F*

12 49. Investor F is a Washington resident who owns property in Devine's neighborhood.
13 Investor F is not an accredited investor. Soon after meeting, Devine told Investor F he was looking for
14 investors for his business Down Under Seafood. Devine showed Investor F blueprints for the seafood
15 store. He promised Investor F large returns.

16 50. Devine provided Investor F with a document entitled "Investment Opportunity." The
17 document described Down Under Seafood's plan to create a seafood store and restaurant. The
18 document stated that "Currently 25% of Down Under Seafood company is being offered for purchase
19 to qualified investors." The document further stated that purchasers would be entitled to share in
20 profits of the business. The document stated that percentage point interests had a value of \$20,000
21 each, and all owners could sell their interests at the current assessed value.

1 notes would be convertible into Kimberley Investments stock. Devine hired an individual in Issaquah,
2 Washington to offer the notes for a \$25,000 commission. The amount of money raised through these
3 promissory notes is unknown.

4 56. By July 2008, Devine changed the focus of Kimberley Investments from purchasing
5 foreclosures to buying land on which to build senior housing. On July 3, 2008, Devine made an offer
6 for Kimberley Investments to buy property in Yakima, Washington for \$4.2 million.

7 57. By September 2008, Devine changed the direction of Kimberley Investments again. He
8 now planned to build an ethanol plant on the land in Yakima. Prior to the closing on the Yakima
9 property, Devine offered the property owner a 5% equity interest in Kimberley Investments for
10 \$250,000. Devine said the owner could pay \$25,000 now and the remaining \$225,000 after closing.
11 Devine represented that a \$250,000 investment in Kimberley Investments could provide \$25 million in
12 profits within five years.

13 58. The property owner did not invest in Kimberley Investments. The closing on the Yakima
14 property did not occur because Devine had no financing for the purchase.

15 Additional Offers of Down Under Seafood

16 59. At least two additional Washington residents were offered the opportunity to invest in
17 Down Under Seafood.

18 Child Support

19 60. As of January 28, 2005, Michael Devine owed \$58,038.13 in past due child support,
20 according to a withholding notice issued by the State of Washington Department of Social and Health
21 Services. It is believed that the child support is still unpaid.

22 Misrepresentations and Omissions

1 61. Respondents Michael Devine and International Consulting LLC failed to provide
2 material information regarding investing in International Consulting LLC, including but not limited to:
3 financial statements, use of proceeds, the business background and experience of Michael Devine, the
4 general risks of investing, and the specific risks of investing in an iron ore venture located in Australia.

5 62. Respondents Michael Devine and Down Under Seafoods LLC failed to provide material
6 information regarding investing in Down Under Seafoods LLC and/or Down Under Seafood Group,
7 including but not limited to: financial statements, use of proceeds, the business background and
8 experience of Michael Devine, the relationship between Down Under Seafoods LLC and Down Under
9 Seafood Group, the entity status of Down Under Seafood Group, the general risks of investing, and the
10 specific risks of investing in a seafood store and fish and chips restaurant.

11 63. Respondent Michael Devine misrepresented that the sale of the Down Under Seafood
12 franchise store was completed when it was not, and misrepresented that there was a ready market for
13 Down Under Seafood LLC and/or Down Under Seafood Group ownership points until a fixed date,
14 when there was no such market.

15 64. Respondents Michael Devine and Kimberley Investments, Inc. failed to provide material
16 information regarding investing in Kimberley Investments, Inc, including but not limited to: financial
17 statements, use of proceeds, the business background and experience of Michael Devine, and the
18 general risks of investing.

19 65. Respondent Michael Devine failed to disclose that he had judgments entered against him
20 related to the iron ore business prior to his offer of investments to Investors D, E, and F.

1 **AUTHORITY AND PROCEDURE**

2 This Final Order is entered pursuant to the provisions of RCW 21.20.390 and RCW 21.20.395
3 and is subject to the provisions of RCW 21.20.440 and Chapter 34.05 RCW. The Respondent has the
4 right to petition the superior court for judicial review of this agency action under the provisions of
5 chapter 34.05 RCW. For the requirements for filing a Petition for Judicial Review, see RCW
6 34.050.510 and sections following. Pursuant to 21.20.395, a certified copy of this order may be filed
7 in Superior Court. If so filed, the clerk shall treat the order in the same manner as a Superior Court
8 judgment as to the fine, and the fine may be recorded, enforced, or satisfied in like manner.

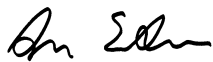
9 **WILLFUL VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE.**

10 DATED AND ENTERED this 26th day of January, 2009.

11 

12 _____
13 MICHAEL E. STEVENSON
14 Securities Administrator

15 Approved by:

16 

17 _____
18 SUZANNE SARASON
19 Chief of Compliance & Examinations

Presented by:



JILL M. VALLELY
Enforcement Attorney