



State of Washington
DEPARTMENT OF FINANCIAL INSTITUTIONS

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

NEW EARTH RENEWABLE ENERGY,
INC., and AHAVA AMEN, a/k/a
ADOLPHUS A. ALLWOOD,

Respondents

OAH Docket No. 2011-DFI-0025
Order No. S-10-289-13-FO02

ORDER (1) DENYING PETITION FOR
REVIEW; (2) AFFIRMATION OF
FINDINGS OF FACT, CONCLUSIONS OF
LAW, AND INITIAL ORDER (DATED
JULY 31, 2013); AND (3) FINAL
DECISION AND ORDER

THIS MATTER was originally commenced on April 12, 2011, when the Division of Securities (hereinafter, "Division of Securities") of the Washington State Department of Financial Institutions (hereinafter, "Department") issued a Statement of Charges and Notice of Intent to Enter an Order to Cease and Desist, to Impose a Fine, and to Charge Costs (hereinafter, "Statement of Charges") to Respondents, NEW EARTH RENEWABLE ENERGY, INC. (hereinafter, "New Earth") and AHAVA AMEN, a/k/a ADOLPHUS A. ALLWOOD (hereinafter, "Amen") alleging that New Earth and Amen violated the Securities Act of Washington, Chapter 21.20 RCW (hereinafter, "Act") and its related regulations.

1.0 Procedural History. On April 12, 2011, the Division of Securities, by and through its Division Director, William M. Beatty, issued the Statement of Charges. On or about April 24, 2011, by and through Respondent Amen, Respondents Amen and New Earth made Application for Adjudicative Hearing. Thereafter, the case was assigned to the Office of Administrative Hearings (hereinafter, "OAH") and originally assigned to Administrative Law Judge Terry A. Schuh (hereinafter, "ALJ Schuh") under OAH Docket No. 2011-DFI-0025.

Thereafter, more than one Notice of Prehearing Conference was issued with Respondents failing to appear as required. ALJ Schuh concluded that Respondents were in default for failure to appear pursuant to RCW 34.05.440, and dismissed their appeal by way of an Initial Order of Default.

Respondents did not respond in a timely manner to the Initial Order of Default, and the Director issued a Final Order of Default against Respondents on September 6, 2011 (hereinafter, "Default Final Order"), which was served upon Respondents by mail based upon an updated Oakland address.

Thereafter, pursuant to RCW 34.05.470, Respondents still had the right to file a Petition for Reconsideration with the Director within ten days of service by mail of the Default Final Order. However, the Respondents did not file a Petition for Reconsideration with the Director until several months after the time for filing a petition for reconsideration in the normal course (i.e., under RCW 34.05.470) had lapsed.

Nonetheless, in consideration of the circumstances as presented by Respondents at that time, the Director exercised his discretion and issued an Order Vacating Initial Order of Default and Default Final Order and Remanding Case to Administrative Law Judge for Adjudicative Hearing ("Order of Remand for Hearing").

Thereafter, a substantive hearing in this matter was held before Administrative Law Judge Lisa N.W. Dublin ("ALJ Dublin") from May 20, 2013, until May 24, 2013. Following the hearing, on July 31, 2013, ALJ Dublin issued and served by mail the Findings of Fact, Conclusions of Law, and Initial Order ("Initial Order") in this matter.

The Respondents had twenty (20) days from the service by mail of the Initial order to file with the Director a petition for review of the Initial Order. The Initial Order described for the benefit of Respondents the aforementioned appeal rights, and further provided that “[a]fter the time for filing a Petition for Review has elapsed, the Director of the Department of Financial Institutions will issue a Final Order subject to appeal rights that will be explained at that time.” See *Initial Order*, p. 21.

The Respondents’ Petition for Review, while dated August 19, 2013, was not received by the Department until August 22, 2013, which was two (2) days after August 20, 2013, the final date for filing a petition for review. See *Declaration of Janet So, Exhibit A*. The Petition for Review was sent via certified mail on August 19, 2013, from Santa Monica, California, with a scheduled delivery date of August 22, 2013. See *Declaration of Janet So, Exhibit B*.

2.0 Record on Review. For purposes of the issues now before the Director, the Record on Review before the Director consists of the entire OAH Record, but including especially:

- 2.1 The Initial Order dated July 31, 2013;
- 2.2 The Petition for Review, including the interlineations and handwritten margin notes of Respondent Ahava Amen contained in an attachment to the Petition for Review;
- 2.3 The Division’s Response to Respondents’ Petition for Review;
- 2.4 The Declaration of Janet So; and
- 2.5 Exhibit B to the Declaration of Janet So, showing the tracking record of Respondents’ certified mailing of the Petition for Review.

3.0 Director's Preliminary Considerations. The Director notes preliminarily that his Order of Remand for Hearing, while granting Respondents a hearing, nonetheless admonished them that timeliness of appearance and in the filing of required pleadings would be essential going forward. Respondents were further advised of this with the instructions for filing a petition for review with the Director that were spelled out in the Initial Order document and served upon them by mail.

Untimely petitions for review may be ignored by the Director. The Department has adopted the Model Rules of Procedure, chapter 10-08 of the Washington Administrative Code (WAC 10-08), which inform the parties as to the deadline for filing any petition for review to the Director. See WAC 208-08-020. Pursuant to WAC 10-08-211(2), a petition for review of an Initial Order must be filed with the Director within twenty (20) days of service of the Initial Order. The deadline for filing a petition for review in this matter was August 20, 2013, twenty days from the date of service by mail on July 31, 2013. Moreover, Respondents elected to use a method of filing (delivery by mail) that they knew or should have known was calculated to result in an untimely filing of their Petition for Review. The Petition for Review was sent via certified mail on August 19, 2013, from Santa Monica, California, with a scheduled delivery date of August 22, 2013. See Declaration of Janet So, Exhibit B. Contrary to Respondents' statement in the Petition for Review, it was untimely filed – it was received two (2) days after the final date for filing a petition for review with the Director.

Even if the Director were to have considered the Petition for Review, the Director notes in passing that the Petition for Review is defective in that it fails to comply with the requirements of WAC 10-08-211(3), which declares that a “petition for review shall specify the portions of the

initial order to which exception is taken and *shall refer to the evidence of record which is relied upon to support the petition.*” [Emphasis added.] While Respondents have attached the Initial Order and made interlineations and handwritten margin notes specifically identifying the findings of fact and conclusions of law to which they assign error on the part of ALJ Dublin, they do not cite to any specific evidence in the record upon which they claim these findings of fact or conclusions of law are false. Rather, most of these margin notes simply say “FALSE” and the remainder of them make conclusory remarks but do not cite any evidence of record from which the Director could make a determination that ALJ Dublin made improper findings. Finally, the reference to “bias” (at page 7 of the interlineated attachment) is not supported by any evidence. Even if the Petition for Review were timely (which it is not), the Director would be privileged under WAC 10-08-211(3) to disregard Respondents’ assignments of error because they are either (1) not supported by the record or (2) there is no way for the Director (in the absence of citations) to determine whether they are supported by the record.

4.0 Findings of Fact. The Director affirms Section 3.0 of this Order and Paragraphs 4.1 through 4.50, inclusive, of the Initial Order.

5.0 Conclusions of Law. The Director affirms Section 3.0 of this Order and Paragraphs 5.1 through 5.23, inclusive, of the Initial Order.

6.0 Affirmation of Initial Order. The Director affirms the Initial Order, Paragraphs 6.2 through 6.5, inclusive.

7.0 Final Decision and Order. Based upon the Findings of Fact, Conclusions of Law, and Re-Affirmation of Initial Order above, NOW, THEREFORE, IT IS HEREBY ORDERED:

7.1 The Petition for Review is denied, and the Initial Order is affirmed.

7.2 The Respondents, NEW EARTH RENEWABLE ENERGY, INC., and AHAVA AMEN, a/k/a ADOLPHUS A. ALLWOOD, offered and sold promissory notes and convertible promissory notes, which constitute securities as defined in RCW 21.20.005 and which were unregistered, in violation of RCW 21.20.040.

7.3 Respondent, AHAVA AMEN, a/k/a ADOLPHUS A. ALLWOOD, sold and/or offered to sell securities while not registered as a securities broker-dealer or securities salesperson in the State of Washington, in violation of RCW 21.20.040.

7.4 The Respondents, NEW EARTH RENEWABLE ENERGY, INC., and AHAVA AMEN, a/k/a ADOLPHUS A. ALLWOOD, made untrue, misleading statements of material fact, and omission(s) of material fact, in connection with the offer and sale of securities, in violation of RCW 21.20.010.

7.5 Under RCW 21.20.390, the Department properly ordered the Respondents, NEW EARTH RENEWABLE ENERGY, INC., and AHAVA AMEN, a/k/a ADOLPHUS A. ALLWOOD, to cease and desist from offering or selling securities in any manner that violated RCW 21.20.010, 21.20.040, and 21.20.140.

7.6 Pursuant to RCW 21.20.390, the Department does now permanently order the Respondents, NEW EARTH RENEWABLE ENERGY, INC., and AHAVA AMEN, a/k/a ADOLPHUS A. ALLWOOD, to cease and desist from offering or selling securities in any manner that violated RCW 21.20.010, 21.20.040, and 21.20.140.

7.7 Pursuant to RCW 21.20.110(4) and 21.20.395, the Director does hereby affirm the Department's assessment against the Respondents, NEW EARTH RENEWABLE ENERGY, INC., and AHAVA AMEN, a/k/a ADOLPHUS A. ALLWOOD, *jointly and severally*, of a fine

in the amount of Ten Thousand Dollars (\$10,000.00) plus administrative fees of Five Thousand Dollars (\$5,000.00).

7.8 The Respondents, NEW EARTH RENEWABLE ENERGY, INC., and AHAVA AMEN, a/k/a ADOLPHUS A. ALLWOOD, *jointly and severally*, are hereby order to pay to the WASHINGTON STATE DEPARTMENT OF FINANCIAL INSTITUTIONS a fine of Ten Thousand Dollars (\$10,000.00), plus an administrative fee of Five Thousand Dollars (\$5,000.00).

7.9 Judicial Review. Each of the Respondents has the right to petition the superior court for judicial review of the Department's action under the provisions of the Administrative Procedures Act, Chapter 34.05 RCW.

7.10 Non-Compliance with Final Decision and Order. If one or more of the Respondents do not comply with the terms of this order, the Department may seek enforcement by the Office of Attorney General against the non-complying Respondent(s) to include the collection of the fines, fees, costs and expenses imposed herein. Failure to comply with this Final Decision and Order may also prompt additional action against the Respondents by the Department, as permitted by the Securities Act of Washington, Chapter 21.20 RCW, for failure to comply with a lawful order of the Department.

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7.11 Service. For purposes of filing a petition for reconsideration or a petition for judicial review, service of this Final Decision and Order is effective upon its having been deposited in the United States Mail with a declaration of service attached hereto.

Dated at Tumwater, Washington, on this 31st day of December, 2013.

WASHINGTON STATE DEPARTMENT
OF FINANCIAL INSTITUTIONS

By:


Scott Jarvis, Director


NOTICE TO THE PARTIES

In accordance with RCW 34.05.470 and WAC 10-08-215, any Petition for Reconsideration of this Order must be filed with the Director within ten (10) days of service of this Order. It should be noted that Petitions for Reconsideration do not stay the effectiveness of this Order. Judicial Review of this Order is available to a party according to provisions set out in the Washington Administrative Procedure Act, RCW 34.05.570.

This is to certify that this Order has been served upon the following parties on January 2, 2014, by depositing a copy of same in the United States mail, postage prepaid.

WASHINGTON STATE DEPARTMENT
OF FINANCIAL INSTITUTIONS

By:


Susan Putzier
Executive Assistant to the Director

Mailed to the following:

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