

**STATE OF WASHINGTON
DEPARTMENT OF FINANCIAL INSTITUTIONS
SECURITIES DIVISION**

IN THE MATTER OF DETERMINING) Order No.: S-11-0620-13-CO02
whether there has been a violation of the)
Securities Act of Washington by:)

David Gintz; Joe Toner; John Griffith; Deb) CONSENT ORDER AS TO JOE TONER
Townsend; Jenning Development, LLC; Jennings)
Investment One, LLC; Jennings Investment Two,)
LLC and Gintz & Toner, LLC,)
Respondents.)

INTRODUCTION

On May 31, 2013, the Securities Administrator of the Securities Division of the Department of Financial Institutions (“Securities Division”) issued a Statement of Charges and Notice of Intent to Enter Order to Cease and Desist, To Impose Fines, and Charge Costs, Order Number S-11-0620-13-SC02, against Respondents David Gintz, Joe Toner, John Griffith, Deb Townsend, Jennings Development, LLC, Jennings Investment One, LLC, Jennings Investment Two, LLC and Gintz & Toner, LLC. Pursuant to the Securities Act of Washington, RCW 21.20, the Securities Division and Respondent Joe Toner do hereby enter into this CONSENT ORDER in settlement of the matters alleged herein. Respondent Joe Toner neither admits nor denies the Findings of Fact and Conclusions of Law as stated below.

FINDINGS OF FACT

Parties

1. Gintz & Toner, LLC (“GT”) was a Washington limited liability company organized on August 4, 2010. It became inactive on October 18, 2012. Its managing members were Joe Toner and David Gintz. GT was conceived as a “vertically integrated real estate investment boutique.” Typically, Fairplay Realty, LLC acted as GT’s real estate brokerage arm and Jennings Development, Inc. acted as GT’s general contractor. GT also operated a branch of Sound Mortgage, a mortgage origination company, for a short time in 2012.

2. Jennings Investment One, LLC (“Jennings Investment One”) was a Washington limited liability company organized on October 25, 2010. It became inactive on February 1, 2013. It was managed by Jennings Development, LLC.

1 3. Jennings Investment Two, LLC (“Jennings Investment Two”) is a Washington limited liability company
2 organized on March 4, 2011, and still active. It is managed by Jennings Development, LLC.

3 4. Jennings Development, LLC (“Jennings Development”) is a Washington limited liability company organized
4 on February 11, 2010, and still active. It is managed by David Gintz.

5 5. David Gintz is a resident of the state of Washington and was a resident of the state of Washington at all times
6 relevant to this Order. David Gintz was the principal of a real estate development company known as the “Gintz
7 Group” from about 2006 to 2010. The Gintz Group raised approximately \$15,000,000 from investors, the vast
8 majority of which was lost due to business failure. David Gintz declared personal bankruptcy in connection with this
9 business failure. See Statement of Charges S-11-0620-13-SC01 for background related to the Gintz Group. He was
10 discharged in bankruptcy in December of 2010.

11 6. Joe Toner is a resident of the state of Washington and was a resident of the state of Washington at all times
12 relevant to this Order. Joe Toner is neither a member nor a manager of Jennings Development, Jennings investment
13 One or Jennings Investment Two. Joe Toner was a managing member of Gintz & Toner, LLC.

14 7. Deb Townsend is a resident of the state of Washington and was a resident of the state of Washington at all
15 times relevant to this Order. Deb Townsend was employed by Jennings Development to sell LLC interests in Jennings
16 Investment One and Jennings Investment Two.

17 8. John Griffith is a resident of the state of Washington and was a resident of the state of Washington at all times
18 relevant to this Order. John Griffith was employed by Jennings Development to sell LLC interests in Jennings
19 Investment One and Jennings Investment Two, as well as promissory notes as described in this Order.

20 Related Entities

21 9. Sound Mortgage, Inc. (“Sound Mortgage”) is a Washington corporation engaged in the sale of mortgage loans
22 to consumers. It operated a branch of Sound Mortgage in conjunction with GT during a short time in 2012. Its
23 chairman is William Widmer.

24 10. Fairplay Funding NW, LLC (“Fairplay Funding”) is a Washington limited liability company organized on
25 January 28, 2008, and still active. Fairplay Funding entered into several loan agreements with GT, including an
unsecured \$100,000 line of credit to fund GT’s business. It is managed by Fairplay Financial, Inc.

1. Fairplay Realty, LLC (“Fairplay Realty”) is a Washington limited liability company organized on November
9, 2010, and still active. It is engaged in the sale of real estate to consumers. Fairplay Realty entered into a “franchise
agreement” with David Gintz and Joe Toner whereby they could use the “trademarks” owned by Fairplay Realty in
order to market their real estate brokerage services. It is managed by Fairplay Financial, Inc.

12. Fairplay Financial, Inc. (“Fairplay Financial”) is a Washington corporation first incorporated on November 10, 2009, and still active. It is a holding company which manages Fairplay Funding and Fairplay Realty. Its president and chairman is William Widmer.

13. William Widmer is a resident of the state of Washington and was a resident of the state of Washington at all times relevant to this Order. He is a principal of Fairplay Financial which manages Fairplay Realty and Fairplay Funding. He is also a principal of Sound Mortgage.

14. Real Estate Association of Puget Sound (“REAPS”) is a Washington professional association catering to real estate investors. It holds meetings open to the general public and maintains lists of businesses and individuals in the Puget Sound region doing business in the real estate industry.

Nature of the Offering

15. Jenning Development and GT collectively raised at least \$907,999 from at least 24 investors via four separate offerings in order to fund the purchase, remodel and sale of single family residences. Respondents sold LLC interests issued by Jenning Investment One and Jenning Investment Two, they sold promissory notes issued by GT in somewhat complicated transactions involving Fairplay Funding, and they sold promissory notes issued by GT when it was apparent that the Jenning Investment One and Jenning Investment Two businesses had failed.

Jenning Investment Offerings

16. Jenning Development raised \$498,000 from 16 investors from approximately December of 2010 to March of 2011, by selling LLC membership interests in Jenning Investment One. Investments ranged from \$1,200 to \$100,000. At least eight of the investors were residents of the state of Washington. At least one of the investors was unaccredited.

17. Jenning Development raised \$227,999 from seven investors from approximately April to May of 2011, by selling LLC membership interests in Jenning Investment Two. Investments ranged from \$10,000 to \$70,000. All of the investors were residents of the state of Washington. At least one of the investors was unaccredited.

18. These LLC investment vehicles were substantially identical. The LLC would use investor funds to purchase a portfolio of “distressed” single family residences, remodel them, and sell them. Investors were promised an annual return of at least 12% on their investment, paid monthly, in addition to a pro-rata share of 50% of the profits that the LLC earned by selling real estate. Jenning Development represented that monthly payments were to be funded from the sale of real estate in the portfolio, except for the first month or two of payments, which would come directly from invested money. Jenning Development characterized these monthly payments as “interest” despite the fact that investors purchased LLC interests, not debt instruments. Jenning Development took a management fee of 3% of the tax-assessed value of the properties it acquired on behalf of the LLC at the time the LLC acquired the property, and the balance of the profits.

19. In order to locate potential investors for LLC interests, Jennings Development hired two salespeople, Deb Townsend and John Griffith. To advertise for the LLC interests, Deb Townsend and John Griffith would host a display booth in the lobby outside of a REAPS meeting. The booth would contain promotional materials for Jennings Development. In addition to hosting such a booth, John Griffith would occasionally cold call potential investors in order to solicit purchases of LLC interests. In order to solicit investors, John Griffith and Deb Townsend represented that investors could earn guaranteed “12% interest” through “medium-risk” investments with Jennings Investment One and Jennings Investment Two.

20. Deb Townsend and John Griffith earned commissions of about 3.5% for investors that they referred to Jennings Development who decided to purchase LLC interests. John Griffith referred at least four investors who purchased LLC interests in Jennings Investment One or Jennings Investment Two, at least two of whom were cold called by Griffith. Deb Townsend referred at least three such investors.

21. Jennings Development also advertised through a REAPS publication distributed to its members. Jennings Development was listed in a REAPS “business directory” under the category “investment and finance.” Deb Townsend’s contact information was listed in a row together with a statement that Jennings Development was offering “opportunities to make 12% annual interest.” Jennings Development continued to list itself in this way in the REAPS business directory even after it had missed monthly payments to investors in Jennings Investment One and Jennings Investment Two.

22. After their initial contact, investors would talk with David Gintz and/or Joe Toner in face to face meetings or over the telephone to discuss the terms of their investment. David Gintz and Joe Toner told investors that their money would be used to purchase real estate at below market value, to remodel that real estate and to sell it for a substantial mark up. David Gintz and Joe Toner characterized investments in Jennings Investment One and Jennings Investment Two as lower risk than other real estate related investments, because the risks would be distributed over many single family residences. David Gintz and Joe Toner did not disclose any particular risks to investors.

23. To evidence their investments, investors received an LLC operating agreement. Investors did not receive a certificate or other evidence of investment besides the operating agreement. David Gintz signed all LLC operating agreements on behalf of Jennings Investment One and Jennings Investment Two. Joe Toner met personally with at least two such LLC interest investors. Jennings Investment One and Jennings Investment Two generally did not provide to investors a copy of the agreement until after they had agreed to invest.

24. Jennings Investment One and Jennings Investment Two made sporadic monthly payments to investors, with many payments being late or not being made at all. By approximately fall of 2012, David Gintz informed investors that they would not recoup their investments because Jennings Investment One and Jennings Investment Two were failed businesses. He offered to investors the opportunity to roll their investments into promissory notes issued by GT, discussed below.

1 25. Jenning Investment One and Jenning Investment Two did not give investors any written document
2 comprehensively describing the risks of the investment, audited financial statements, or a copy of the LLC operating
3 agreement prior to their investment. David Gintz did not fully disclose his prior failures in the real estate industry, nor
4 did he disclose his 2010 bankruptcy. In advertisements and promotional materials the investment was described as an
5 investment in Jennings Development, when in fact the investments were issued by Jennings Investment One and
6 Jennings Investment Two.

7 *GT Promissory Notes*

8 26. In approximately fall of 2012, GT, through David Gintz, approached the Jennings Investment One and Jennings
9 Investment Two investors and explained to them that the investment LLCs were failures and that they would not be
10 able to recover their investment through the business of the LLCs. GT offered to replace the investors' LLC interests
11 with promissory notes made out by GT in a face amount equal to the investors' initial capital contribution to the LLC.
12 The notes had terms of three years and interest of 12% per annum, payable in a single lump sum. David Gintz told
13 investors that this was the only way they were going to be paid back.

14 27. At least two LLC investors, both of whom were unaccredited, agreed to replace their LLC interests with GT
15 promissory notes.

16 28. In November of 2012, Joe Toner informed at least one investor that GT did not have the funds to pay
17 investors back and that GT had no plans to pay investors back under the notes. GT became inactive with the
18 Washington Secretary of State's office on October 18, 2012.

19 29. GT gave the promissory note investors a private placement memorandum which purported to
20 comprehensively disclose the risks associated with the investment. That memorandum, however, did not disclose
21 David Gintz's prior real estate failure associated with the Gintz Group, nor did it disclose his personal bankruptcy. GT
22 did not deliver audited financial statements to these investors. GT did not disclose to these investors the current
23 liabilities then due from GT.

24 *GT Promissory Notes Involving Fairplay Funding as a Third-Party Lender*

25 30. Around the time that Jennings Development was soliciting investors for Jennings Investment Two, GT
26 proposed and entered into two arrangements with investors whereby the investor borrowed money in order to invest
27 with GT. GT referred the investors to Fairplay Funding, which loaned the investors money secured by real estate that
28 the investors owned. The investors then gave the money to GT in exchange for a promissory note. David Gintz, as
29 GT's managing member, facilitated the transactions and signed the promissory notes on behalf of GT.

30 31. For example, on April 7, 2011, one such investor borrowed \$78,000 from Fairplay Funding at a 12% per
31 annum rate of interest, and delivered to William Widmer of Fairplay Funding a deed of trust on a single family

1 residence that the investor owned. The investor's loan required the investor to pay Fairplay Funding \$780 per month
2 in interest payments, and to pay off the principal of the note on January 7, 2012.

3 32. GT issued a promissory note to the investor, signed by David Gintz as GT's managing member, for the
4 amount of the loan, \$78,000. The promissory note included interest of 24% per annum, and required GT to make
5 monthly interest payments of \$1,560, \$780 going to the investor and \$780 going to Fairplay Funding. GT would also
6 be responsible for paying off the investor's loan when the principal came due. The investor received a personal
7 guaranty from David Gintz guarantying payment on his promissory note.

8 33. A separate investor invested \$104,000 with GT in a similar transaction. Both investors were referred to GT by
9 John Griffith, who initially contacted them via cold calls. They then met with David Gintz to discuss the terms of their
10 investments and sign the paperwork. David Gintz told the investors that their money would be used to fund the
11 acquisition and remodeling of real estate, which would be then be sold for a profit. He represented to the investors that
12 these arrangements were a good way to invest in the recovering real estate market and to convert home equity into an
13 income stream.

14 34. GT failed to fulfill its obligations to either investor under the notes. Fairplay Funding initiated foreclosure
15 proceedings on both of the investors' real estate. Both investors have since sued GT and Fairplay Funding, among
16 others, in efforts to stop the foreclosure actions.

17 35. GT did not deliver to these two investors any written document comprehensively describing the risks of the
18 investment, audited financial statements, or the current liabilities due from GT. David Gintz did not deliver to the
19 investor who received a personal guaranty a personal financial statement disclosing whether David Gintz's personal
20 assets were sufficient to guaranty the investment. David Gintz did not disclose to this investor David Gintz's past
21 management experience or that David Gintz had declared personal bankruptcy in connection with his past real estate
22 business failures.

23 36. GT did not disclose to either investor the extent of the relationship between GT and the family of entities
24 related to William Widmer, namely that David Gintz and Joe Toner entered into a "franchise agreement" with
25 Fairplay Realty, that GT operated a branch of Sound Mortgage and that Fairplay Funding had entered into several
loan arrangements with GT in the past, including a \$100,000 line of credit extended to GT.

Misrepresentations and Omissions

37. In order to advertise the LLC interests available through Jennings Investment One and Jennings Investment
Two, Jennings Development created a flyer which promised "12% guaranteed interest." The flyer directed the reader to
John Griffith, and included his telephone number. The flyer was distributed widely, and was received by at least three
investors in Jennings Investment One and Jennings Investment Two. In fact, the interest that investors were to receive

1 was not guaranteed, but was contingent on the successful purchase, remodeling and sale of real estate by Jennings
2 Development.

3 38. Jennings Development also delivered profit projections to prospective investors in Jennings Investment One
4 and Jennings Investment Two. One such projection promised that Jennings Development would be able to deliver
5 investors a return on investment of 108% after fifteen months. Another profit projection illustrated the return
6 anticipated for a \$50,000 investment, showing the investor receiving a return of 104,000 after fifteen months. The
7 projection included assumptions such as the number of single family residences purchased and sold and the prices for
8 which these transactions would be accomplished, but did not disclose the underlying reasons that those particular
9 figures were thought reasonable by management. Jennings Development also failed to disclose risks that could affect
such assumptions and bases, such as a slowing real estate market, changing tax incentives or inadequate
capitalization. At least one investor in Jennings Investment One received these profit projections, as did at least one
investor in Jennings Investment Two.

10 Registration Status

11 39. David Gintz, GT, Jennings Investment One and Jennings Investment Two are not currently registered to sell
12 their securities in the state of Washington and have not previously been so registered, nor have they filed a claim of
13 exemption from registration.

14 40. Jennings Development, LLC, John Griffith, Deb Townsend, David Gintz and Joe Toner are not currently
15 registered as securities salespeople or broker-dealers in the state of Washington and have not previously been so
16 registered.

17 Based upon the above Findings of Fact, the following Conclusions of Law are made:

18 **CONCLUSIONS OF LAW**

19 **I.**

20 The offer and/or sale of LLC interests, personal guaranties and promissory notes as described above constitute
21 the offer and/or sale of a security as defined in RCW 21.20.005(14) and (17) as an investment contract, a note,
evidence of indebtedness, consideration in the risk capital of a venture and/or otherwise.

22 **II.**

23 The offer and/or sale of said securities was in violation of RCW 21.20.140 because no registration for such
offer and/or sale is on file with the Securities Administrator.

24 **III.**

1 Joe Toner violated RCW 21.20.040 by offering and/or selling said securities while not being registered as a
2 securities salesperson or broker-dealer in the state of Washington.

3 **IV.**

4 The offer and/or sale of said securities was made in violation of RCW 21.20.010 because of the material
5 misrepresentations and omissions described above.

6 **CONSENT ORDER**

7 Based upon the foregoing and finding it in the public interest:

8 IT IS AGREED AND ORDERED that Respondent Joe Toner, his agents and employees, each shall cease and
9 desist from violating RCW 21.20.140, the securities registration section of the Securities Act of Washington.

10 IT IS FURTHER AGREED AND ORDERED that Respondent Joe Toner, his agents and employees, each
11 shall cease and desist from violating RCW 21.20.040, the securities salesperson and broker-dealer registration section
12 of the Securities Act of Washington.

13 IT IS FURTHER AGREED AND ORDERED that Respondent Joe Toner, his agents and employees, each
14 shall cease and desist from violating RCW 21.20.010, the anti-fraud section of the Securities Act of Washington.

15 IT IS FURTHER AGREED AND ORDERED that Respondent Joe Toner shall be liable for and shall pay a
16 fine of \$2,500 prior to the entry of this Consent Order.

17 IT IS FURTHER AGREED AND ORDERED that Respondent Joe Toner shall be liable for and shall pay
18 investigative costs of \$1,000 prior to the entry of this Consent Order.

19 IT IS FURTHER AGREED that, except in an action by the Securities Division of the Washington State
20 Department of Financial Institutions to enforce the obligations of Respondent Joe Toner in this Consent Order, this
21 Consent Order may neither be deemed nor used as an admission of or evidence of any fault, omission or liability of
22 Respondent Joe Toner in any civil, criminal, arbitration, or administrative proceeding.

23 IT IS FURTHER AGREED that the Securities Division has jurisdiction to enter this Consent Order.

24 IT IS FURTHER AGREED that Respondent Joe Toner enters into this Consent Order freely and voluntarily
25 and with a full understanding of its terms and significance.

IT IS FURTHER AGREED that in consideration of the foregoing, Respondent Joe Toner waives his right to a
hearing and to judicial review of this matter pursuant to RCW 21.20.440 and Chapter 34.05 RCW.

WILLFUL VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE.

1 Signed this 31st day of January 2014.

2 Signed by:

3
4 /s/
Joe Toner

5 Approved as to Form by:

6 /s/
7 Thomas P. Quinlan, Attorney for Joe Toner
8 WSBA No. 21325
9

10 SIGNED and ENTERED this 5th day of February 2014.

11
12
13 

14
15 William M. Beatty
16 Securities Administrator

17 Approved by:

18 

19
20 Suzanne Sarason
21 Chief of Enforcement

Presented by:

18 

20 Jack McClellan
21 Financial Legal Examiner