

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

IN THE MATTER OF DETERMINING) Order No.: S-11-0620-13-CO07
whether there has been a violation of the)
Securities Act of Washington by:)

David Gintz; Joe Toner; John Griffith; Deb)
Townsend; Jenning Development, LLC; Jenning) CONSENT ORDER AS TO DAVID GINTZ; JENNING
Investment One, LLC; Jenning Investment Two,) DEVELOPMENT, LLC; JENNING INVESTMENT ONE,
LLC and Gintz & Toner, LLC,) LLC; JENNING INVESTMENT TWO, LLC; GINTZ &
Respondents.) TONER, LLC
)
)

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, Jenning Development, LLC, Jenning Investment One, LLC, Jenning Investment Two, LLC and Gintz & Toner, LLC. Pursuant to the Securities Act of Washington, RCW 21.20, the Securities Division and Respondents, David Gintz; Jenning Development, LLC, Jenning Investment One, LLC, Jenning Investment Two, LLC and Gintz & Toner, LLC, do hereby enter into this CONSENT ORDER in settlement of the matters alleged herein. Respondents, David Gintz; Jenning Development, LLC, Jenning Investment One, LLC, Jenning Investment Two, LLC and Gintz & Toner, LLC, neither admit nor deny 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. It was managed by Joe Toner and David Gintz. GT was conceived as a “vertically integrated real estate investment boutique,” incorporating its own real estate brokerage and general contractor. GT also operated a branch of Sound Mortgage, a mortgage origination company, for a short time in 2012.
2. Jenning Investment One, LLC (“Jenning Investment One”) was a Washington limited liability company organized on October 25, 2010. It became inactive on February 1, 2013. It was managed by Jenning Development, LLC.
3. Jenning Investment Two, LLC (“Jenning Investment Two”) is a Washington limited liability company organized on March 4, 2011, and still active. It is managed by Jenning Development, LLC.

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

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

7 6. Joe Toner is a resident of the state of Washington and was a resident of the state of Washington at all times
relevant to this Statement of Charges.

8 7. Deb Townsend is a resident of the state of Washington and was a resident of the state of Washington at all
9 times relevant to this Statement of Charges. Deb Townsend was employed by Jenning Development to sell LLC
interests in Jenning Investment One and Jenning Investment Two.

10 8. John Griffith is a resident of the state of Washington and was a resident of the state of Washington at all times
11 relevant to this Statement of Charges. John Griffith was employed by Jenning Development to sell LLC interests in
12 Jenning Investment One and Jenning Investment Two, as well as promissory notes as described in this Statement of
13 Charges.

14 Related Entities

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

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

20 11. Fairplay Realty, LLC (“Fairplay Realty”) is a Washington limited liability company organized on November
21 9, 2010, and still active. It is engaged in the sale of real estate to consumers. Fairplay Realty entered into a “franchise
22 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.

23 12. Fairplay Financial, Inc. (“Fairplay Financial”) is a Washington corporation first incorporated on November
24 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 Statement of Charges. 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. They 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, Jenning 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 Jenning

1 Development. In addition to hosting such a booth, John Griffith would occasionally cold call potential investors in
2 order to solicit purchases of LLC interests. In order to solicit investors, John Griffith and Deb Townsend represented
3 that investors could earn guaranteed “12% interest” through “medium-risk” investments with Jennings Investment One
4 and Jennings Investment Two.

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

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

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

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

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

31 25. Jennings Investment One and Jennings Investment Two did not give investors any written document
32 comprehensively describing the risks of the investment, audited financial statements, or a copy of the LLC operating
33 agreement prior to their investment. David Gintz did not fully disclose his prior failures in the real estate industry, nor

1 did he disclose his 2010 bankruptcy. In advertisements and promotional materials the investment was described as an
2 investment in Jennings Development, when in fact the investments were issued by Jennings Investment One and
3 Jennings Investment Two.

4 *GT Promissory Notes*

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

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

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

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

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

22 30. Around the time that Jennings Development was soliciting investors for Jennings Investment Two, GT
23 proposed and entered into two arrangements with investors whereby the investor borrowed money in order to invest
24 with GT. GT referred the investors to Fairplay Funding, which loaned the investors money secured by real estate that
25 the investors owned. The investors then gave the money to GT in exchange for a promissory note.

31. For example, on April 7, 2011, one such investor borrowed \$78,000 from Fairplay Funding at a 12% per
annum rate of interest, and delivered to William Widmer of Fairplay Funding a deed of trust on a single family
residence that the investor owned. The investor's loan required the investor to pay Fairplay Funding \$780 per month
in interest payments, and to pay off the principal of the note on January 7, 2012.

32. GT issued a promissory note to the investor for the amount of the loan, \$78,000. The promissory note
included interest of 24% per annum, and required GT to make monthly interest payments of \$1,560, \$780 going to the
investor and \$780 going to Fairplay Funding. GT would also be responsible for paying off the investor's loan when

1 the principal came due. The investor received a personal guaranty from David Gintz guarantying payment on his
2 promissory note.

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

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

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

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

22 Misrepresentations and Omissions

23 37. In order to advertise the LLC interests available through Jennings Investment One and Jennings Investment
24 Two, Jennings Development created a flyer which promised "12% guaranteed interest." The flyer directed the reader to
25 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
was not guaranteed, but was contingent on the successful purchase, remodeling and sale of real estate by Jennings
Development.

38. Jennings Development also delivered profit projections to prospective investors in Jennings Investment One
and Jennings Investment Two. One such projection promised that Jennings Development would be able to deliver
investors a return on investment of 108% after fifteen months. Another profit projection illustrated the return
anticipated for a \$50,000 investment, showing the investor receiving a return of 104,000 after fifteen months. The

1 projection included assumptions such as the number of single family residences purchased and sold and the prices for
2 which these transactions would be accomplished, but did not disclose the underlying reasons that those particular
3 figures were thought reasonable by management. Jennings Development also failed to disclose risks that could affect
4 such assumptions and bases, such as a slowing real estate market, changing tax incentives or inadequate
5 capitalization. At least one investor in Jennings Investment One received these profit projections, as did at least one
6 investor in Jennings Investment Two.

7 Registration Status

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

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

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

15 **CONCLUSIONS OF LAW**

16 **I.**

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

20 **II.**

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

23 **III.**

24 David Gintz violated RCW 21.20.040 by offering and/or selling said securities while not being registered as a
25 securities salesperson or broker-dealer in the state of Washington. Jennings Development, LLC has violated RCW
21.20.040 by offering and/or selling said securities while not being registered as a broker-dealer in the state of
22 Washington.

23 **IV.**

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

CONSENT ORDER

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

IT IS AGREED AND ORDERED that Respondents, David Gintz; Jennings Development, LLC, Jennings Investment One, LLC, Jennings Investment Two, LLC and Gintz & Toner, LLC, their agents and employees, each shall cease and desist from violating RCW 21.20.140, the securities registration section of the Securities Act of Washington.

IT IS FURTHER AGREED AND ORDERED that Respondents, David Gintz; Jennings Development, LLC, Jennings Investment One, LLC, Jennings Investment Two, LLC and Gintz & Toner, LLC, their agents and employees, each shall cease and desist from violating RCW 21.20.040, the securities salesperson and broker-dealer registration section of the Securities Act of Washington.

IT IS FURTHER AGREED AND ORDERED that Respondents, David Gintz; Jennings Development, LLC, Jennings Investment One, LLC, Jennings Investment Two, LLC and Gintz & Toner, LLC, their agents and employees, each shall cease and desist from violating RCW 21.20.010, the anti-fraud section of the Securities Act of Washington.

IT IS FURTHER AGREED AND ORDERED that Respondent David Gintz shall be liable for and shall pay a fine of \$5,000. Payment of the fine shall be made as follows: David Gintz shall pay \$50 on or before entry of this Consent Order. David Gintz shall then make monthly payments of \$50 for the following five (5) consecutive months. David Gintz shall then make monthly payments of \$100 for the following forty-seven (47) consecutive months. Each payment shall be due on the first day of the month, unless the first day of the month falls on a weekend or holiday, in which case payments shall be due on the first business day following the first day of the month.

IT IS FURTHER AGREED that if David Gintz fails to make any monthly payment, the \$5,000 fine imposed in this Consent Order shall become immediately due and payable, and the Securities Division may seek enforcement of the Consent Order pursuant to RCW 21.20.395.

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

IT IS FURTHER AGREED that Respondents, David Gintz; Jennings Development, LLC, Jennings Investment One, LLC, Jennings Investment Two, LLC and Gintz & Toner, LLC, entered into this Consent Order freely and voluntarily and with a full understanding of its terms and significance.

IT IS FURTHER AGREED that in consideration of the foregoing, Respondents, David Gintz; Jennings Development, LLC, Jennings Investment One, LLC, Jennings Investment Two, LLC and Gintz & Toner, LLC, waived their 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 October 2013.

2 Signed by:

3 Jennings Development, LLC

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5 /s/
David Gintz

6 Jennings Investment One, LLC

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8 /s/
David Gintz

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10 Jennings Investment Two, LLC

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12 /s/
David Gintz

13 Gintz & Toner, LLC

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15 /s/
David Gintz

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17 Signed by:

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19 /s/
David Gintz, Individually

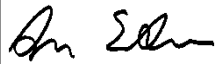
20 SIGNED and ENTERED this 12th day of December 2013.

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24 William M. Beatty
Securities Administrator

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Approved by:



Suzanne Sarason
Chief of Enforcement

Presented by:



Jack McClellan
Financial Legal Examiner