

STATE OF WASHINGTON
DEPARTMENT OF FINANCIAL INSTITUTIONS
SECURITIES DIVISION

IN THE MATTER OF DETERMINING) Order Number S-11-0674-12-FO01
Whether there has been a violation of the)
Securities Act of Washington by:) ENTRY OF FINDINGS OF FACT AND
Andrew J. Eubanks;) CONCLUSIONS OF LAW AND FINAL
Respondent) ORDER TO CEASE AND DESIST, TO
) CHARGE COSTS, AND IMPOSE A FINE
)
)

THE STATE OF WASHINGTON TO: Andrew J. Eubanks

INTRODUCTION

On April 25, 2012, the Securities Administrator of the State of Washington issued Statement of Charges and Notice of Intent to Enter Order to Cease and Desist, to Charge Costs, and to Impose a Fine, S-11-0674-11-SC01 (hereinafter "Statement of Charges") against Respondent Andrew J. Eubanks. The Statement of Charges, together with a Notice of Opportunity to Defend and Opportunity for Hearing ("Notice") and an Application for Adjudicative Hearing ("Application for Hearing") were served on Respondent Andrew J. Eubanks on May 1, 2012.

The Notice advised that a written application for an administrative hearing on the Statement of Charges must be received within twenty days from the date of receipt of the Notice. Respondent Andrew J. Eubanks failed to request an administrative hearing within twenty days of receipt of the Statement of Charges and Notice of Opportunity for Hearing, either on the Application for Hearing provided, or otherwise.

ENTRY OF FINDINGS OF FACT AND
CONCLUSIONS OF LAW AND FINAL ORDER TO
CEASE AND DESIST, TO CHARGE COSTS, AND
IMPOSE A FINE

1 The Securities Administrator therefore will adopt as final the Findings of Fact and
2 Conclusions of Law as set forth in the Statement of Charges and enter a final order against
3 Respondent Andrew J. Eubanks to cease and desist from violations of the Securities Act, and to
4 impose the fine and to charge costs. The Securities Administrator makes the following Findings
5 of Fact and Conclusions of Law:

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7 **FINDINGS OF FACT**

8 Respondent

9 1. Andrew J. Eubanks (“Eubanks”) was at all relevant times a resident of
10 Washington.

11 Nature of the Offering

12 2. Between approximately 1991 and 2005, Eubanks raised approximately \$80,000
13 through the offer and sale of investments in purported investment funds to a senior citizen
14 residing in Washington. Eubanks led the investor to believe that he had exclusive access to
15 investment funds that had been started by Microsoft executives. Eubanks provided the
16 investor with documents that referred to the investment funds as “Excel Subgroup 4.0
17 Investment 3.3” and “Excel Subgroup 5.0 Investment 3.3.” Excel Subgroup 4.0 Investment
18 3.3 was described as a “moderately aggressive fund” while Excel Subgroup 5.0 Investment 3.3
19 was purportedly a “more aggressive” fund. Offering documents represented that the funds
20 purportedly owned a large volume of Microsoft stock, and also invested in mutual funds and
21 bonds issued by well-known public companies such as Boeing and Proctor & Gamble.
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1 3. Between approximately 1991 and 2001, the Washington resident made over 20
2 investments with Eubanks. Eubanks claimed that only he could buy into the funds and that the
3 investment account was in his name. Following Eubanks' instructions, the investor wrote
4 checks made payable to Eubanks. Eubanks typically provided the investor with a "Deposit
5 Invoice" that showed the amount of the investment and an account number. In 2005, Eubanks
6 directed the investor to pay him \$1,295.72 as a purported "corporate administration fee."

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8 4. Eubanks regularly provided the investor with account statements showing that
9 the investment funds were purportedly earning large returns of as much as 30% to 52% per
10 year. The account statements claimed that the investment funds outperformed leading indexes,
11 such as the S&P 500. For example, an account statement from December 1992 stated: "We did
12 beat the S&P 500 by over 300%, while maintaining a safe investment environment." Similarly,
13 an account statement from September 1995 stated: "Over the last year our returns have been
14 three times that of the S&P 500 and twice that of the average mutual fund."

15 5. The account statements often referred to purported investment deadlines, which
16 created a false sense of urgency and induced the investor to make additional investments with
17 Eubanks. For example, one account statement represented: "Due to the incredible success of
18 these funds we are again reaching the maximum total investment as set by [the] Securities and
19 Exchange Commission. Because of this limit we will be allowing deposits for seven days
20 only." Another account statement represented: "We are rapidly approaching the SEC limit for
21 our fund type, when this limit is reached the funds will be closed for about a year. We expect
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1 that to happen on this cycle, so this will probably be the last opportunity to increase your
2 investment for some time.”

3 6. Eubanks provided the investor with quarterly and annual statements that listed
4 the investor’s purported account balance, which grew steadily over time. In 2005, Eubanks
5 provided an account statement that indicated the investor’s account had grown to over
6 \$600,000. In 2007, Eubanks provided an account statement showing that the investor’s
7 account had grown to more than \$725,000.
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9 7. In 2007, the investor contacted Eubanks regarding withdrawing funds from his
10 account. Eubanks came to investor’s home and provided the investor with a withdrawal form,
11 which the investor filled out and returned to Eubanks. Between approximately 2008 and 2009,
12 Eubanks made lulling statements to the investor and provided various excuses for
13 nonpayment. For example, Eubanks told the investor that his funds were in the Cayman
14 Islands and that there were problems in getting the funds back to the United States due to a
15 hurricane. Eubanks blamed other delays on other third parties. Eubanks eventually stopped
16 returning the investor’s phone calls and did not repay the investor.
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18 8. The Securities Division has been unable to confirm the existence of any SEC-
19 regulated investment fund bearing the name “Excel Subgroup 4.0 Investment 3.3” or “Excel
20 Subgroup 5.0 Investment 3.3.”

21 Misrepresentation and Omissions

22 9. In the offer and sale of the investments described above, Eubanks failed to
23 disclose material information regarding the investments, including, but not limited to, the
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1 identity and background of the persons managing the investment funds; and the fees and other
2 compensation paid to fund managers; and Eubanks' prior investment experience and track
3 record. Eubanks misrepresented the risks of investing in the Excel Subgroup 4.0 Investment
4 3.3 fund, stating that it provided "consistently high returns" with "minimal risk" when in fact,
5 it involved the significant risk of a total loss.

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7 Registration Status

8 10. Andrew J. Eubanks is not currently registered as a securities salesperson or
9 broker-dealer in the State of Washington and has not previously been so registered.

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

11 **CONCLUSIONS OF LAW**

12 1. The offer or sale of the investments described above constitutes the offer or sale
13 of a security as defined in RCW 21.20.005(14) and (17).

14 2. Respondent Andrew J. Eubanks has violated RCW 21.20.140, the securities
15 registration provision of the Securities Act of Washington, by offering or selling said securities
16 while no registration for such offer or sale was on file with the Division.

17 3. Respondent Andrew J. Eubanks has violated RCW 21.20.040 by offering or
18 selling said securities while not registered as a securities salesperson or broker-dealer in the
19 State of Washington.

20 4. Respondent Andrew J. Eubanks has violated RCW 21.20.010, the anti-fraud
21 provision of the Securities Act, because, as set forth in the Tentative Findings of Fact, he made
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1 misstatements of material facts or omitted to state material facts necessary in order to make the
2 statements made, in light of circumstances under which they were made, not misleading.

3 **FINAL ORDER**

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

5 It is hereby ORDERED that Respondent Andrew J. Eubanks and his agents and
6 employees each shall cease and desist from offering or selling securities in violations of RCW
7 21.20.140, the securities registration section of the Securities Act of Washington.

8 It is further ORDERED that Respondent Andrew J. Eubanks and his agents and
9 employees each shall cease and desist from acting as an unregistered securities broker-dealers
10 or salespersons in violation of RCW 21.20.040, the broker-dealer and securities salesperson
11 registration section of the Securities Act of Washington.

12 It is further ORDERED that Respondent Andrew J. Eubanks and his agents and
13 employees each shall cease and desist from violating RCW 21.20.010, the anti-fraud section
14 of the Securities Act of Washington.

15 It is further ORDERED that Respondent Andrew J. Eubanks shall be liable for and pay a
16 fine in the amount of \$10,000.

17 It is further ORDERED that Respondent Andrew J. Eubanks shall be liable for and pay
18 costs in the amount of \$1,000.

19 **AUTHORITY AND PROCEDURE**

20 This Final Order is entered pursuant to the provisions of RCW 21.20.390 and RCW
21 21.20.395, and is subject to the provisions of RCW 21.20.440 and Chapter 34.05 RCW. The
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1 Respondent has the right to petition the superior court for judicial review of this agency action
2 under the provisions of chapter 34.05 RCW. For the requirements for filing a Petition for
3 Judicial Review, see RCW 34.05.510 and sections following. Pursuant to 21.20.395, a certified
4 copy of this order may be filed in Superior Court. If so filed, the clerk shall treat the order in the
5 same manner as a Superior Court judgment as to the fine, and the fine may be recorded,
6 enforced, or satisfied in like manner.
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8 **WILLFUL VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE.**

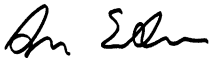
9 Dated and Entered this 23rd day of May, 2012.

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12 WILLIAM M. BEATTY
13 Securities Administrator

14 Approved by:

Presented by:

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17 Suzanne E. Sarason
18 Chief of Enforcement

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20 Robert Kondrat
21 Enforcement Attorney

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