



Nature of the Offering

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4. Between April and June 2012, Sandsberry offered and sold at least \$525,000 worth of Runaway Hearts LLC membership interests to fund the production of a motion picture entitled *Runaway Hearts* based on an original screenplay by Sandsberry. *Runaway Hearts* is billed as “an inspirational, family-friendly story that parents will be able to share with their children.” The \$525,000 Sandsberry raised is less than the total budget of *Runaway Hearts*.

5. Sandsberry sold Runaway Hearts LLC membership interests to at least seventeen investors, at least sixteen of whom are Washington State residents. At least one investor was unaccredited.

6. Sandsberry sold Runaway Hearts interest almost exclusively to friends, family, and acquaintances. On two occasions, Sandsberry was given a referral for prospective investors. Sandsberry cold-called these two prospective investors and solicited investment in Runaway Hearts. Both of these prospective investors invested in Runaway Hearts.

7. Sandsberry met with each of the investors in person prior to their investment. The purpose of these face-to-face meetings was to promote Runaway Hearts and to solicit investment. Sandsberry gave a PowerPoint presentation which included descriptions of *Runaway Hearts*, information about key persons working on the film, profit projections, and information about a Louisiana tax credit. In one part of Sandsberry’s presentation, Sandsberry asked investors to consider the success of other smaller-budget inspirational films such as *Facing the Giants*, *Fireproof*, and *Courageous*. On one slide, *Fireproof* showed a budget of \$500,000 with a Box office/DVD take of \$66 million. On another slide, *Courageous* showed a budget of \$2 million with a Box office/DVD take of \$49 million. Sandsberry did not provide a reasonable basis for such comparisons or include the assumptions on which the comparisons were made.

8. In addition to the PowerPoint presentation, Sandsberry also provided investors with a promotional packet so that investors could review the details of the investment at their leisure. Similar to the PowerPoint presentation, the promotional packet included details about Runaway Hearts including a description of *Runaway Hearts*, information about key persons working on the film, profit projections, and information about a Louisiana tax credit. The promotional packet contained four different hypothetical scenarios of return on investment if *Runaway Hearts* is sold to a studio/distributor. The four hypothetical scenarios projected a range of possible sale amounts listed from low to

1 high. All four hypothetical scenarios projected a net profit on the sale of *Runaway Hearts* and an investment return to  
2 investors. The materials did not provide a reasonable basis for such projections or include the assumptions on which  
3 the projections were made.

4 9. Also included in the *Runaway Hearts* promotional packet were the average box office gross of low-budget  
5 films. The materials indicated that since 2000 thirty-five low-budget films have been released in theaters and that the  
6 average box-office gross for these films was \$5.1 million – roughly eleven times the average budget of \$480,700. The  
7 materials did not provide details on how many low-budget films produced since 2000 did not receive a theatrical  
8 release and, therefore, were not included in the average box office gross.

9 10. In return for their investment, *Runaway Hearts* pays investors any available cash flow, as cash flow is defined  
10 in the *Runaway Hearts* operating agreement, until 115% of all capital contributions have been repaid, and thereafter,  
11 to the members in accordance with their share of the net profits, as net profits is defined in the *Runaway Hearts*  
12 operating agreement. Canyon Sands receives 50% of the net profits. Investors receive their pro rata share of the  
13 remaining 50% of the net profits.

14 11. Investors invested by submitting personal checks to Sandsberry and signing a *Runaway Hearts* operating  
15 agreement. Sandsberry signed the operating agreement on behalf of Canyon Sands.

16 12. *Runaway Hearts* was filmed in Louisiana in the summer of 2012. At the time of this Statement of Charges,  
17 *Runaway Hearts* is in post-production.

#### 18 Registration Status

19 13. *Runaway Hearts* Productions, LLC is not currently registered to sell its securities in the state of Washington  
20 and has not previously been so registered nor has it filed a claim of exemption from registration.

21 14. Canyon Sands Productions, Inc. is not registered as a broker-dealer in the state of Washington and has not  
22 previously been so registered.

23 15. Scott Sandsberry is not registered as a securities salesperson or broker-dealer in the state of Washington and  
24 has not previously been so registered.

**CONCLUSIONS OF LAW**

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

**I.**

The offer or sale of limited liability company interests in Runaway Hearts Productions, LLC, as described above, constitutes the offer and/or sale of a security as defined in RCW 21.20.005(14) and (17).

**II.**

Respondents violated RCW 21.20.140, the securities registration provision of the Securities Act, because they offered and/or sold securities for which there was no registration on file with the Securities Administrator and did not qualify for exemption filing.

**III.**

Canyon Sands Productions, Inc. and Scott Sandsberry violated RCW 21.20.040 by offering and/or selling said securities while not registered as a securities salesperson or broker-dealer in the state of Washington.

**IV.**

The offer and/or sale of said securities was made in violation of RCW 21.20.010 because, as set forth in paragraphs 7-9 of the Tentative Findings of Fact, Respondents made untrue statements of material facts or omitted material facts necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading.

**NOTICE OF INTENT TO ORDER THE RESPONDENT TO CEASE AND DESIST**

Pursuant to RCW 21.20.390(1) and based upon the above Tentative Findings of Fact and Conclusions of Law, the Securities Administrator intends to order that Respondents, Runaway Hearts Productions, LLC; Canyon Sands Productions, Inc.; and Scott Sandsberry, each shall cease and desist from violations of RCW 21.20.010, RCW 21.20.040, and RCW 21.20.140.

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**NOTICE OF INTENT TO IMPOSE A FINE**

Pursuant to RCW 21.20.395, and based upon the above Tentative Findings of Fact and Conclusions of Law, the Securities Administrator intends to order that Respondents, Runaway Hearts Productions, LLC; Canyon Sands Productions, Inc.; and Scott Sandsberry, shall be liable for and shall pay a fine of \$5,000.

**NOTICE OF INTENT TO CHARGE COSTS**

Pursuant to RCW 21.20.390, and based upon the Tentative Findings of Fact and Conclusions of Law, the Securities Administrator intends to order that Respondents, Runaway Hearts Productions, LLC; Canyon Sands Productions, Inc.; and Scott Sandsberry, shall be liable for and shall pay the Securities Division the costs, fees, and other expenses incurred in the conduct of the administrative investigation and hearing of this matter of not less than \$3,000.

**AUTHORITY AND PROCEDURE**

This Statement of Charges is entered pursuant to the provisions of Chapter 21.20 RCW and is subject to the provisions of Chapter 34.05 RCW. The Respondents, Runaway Hearts Productions, LLC; Canyon Sands Productions, Inc.; and Scott Sandsberry, may each make a written request for a hearing as set forth in the NOTICE OF OPPORTUNITY TO DEFEND AND OPPORTUNITY FOR HEARING accompanying this Order. If a respondent does not make a hearing request in the time allowed, the Securities Administrator intends to adopt the above Tentative Findings of Fact and Conclusions of Law as final and to enter a permanent order to cease and desist as to that respondent, to impose any fines sought against that respondent, and to charge any costs sought against that respondent.

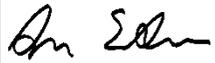
Signed and Entered this 14th day of October 2013.



William M. Beatty  
Securities Administrator

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Approved by:



Suzanne Sarason  
Chief of Enforcement



Jack McClellan  
Financial Legal Examiner Supervisor

Presented by:



Brian J. Guerard  
Financial Legal Examiner

STATE OF WASHINGTON  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE DEPARTMENT OF FINANCIAL INSTITUTIONS  
SECURITIES DIVISION

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

**Runaway Hearts Productions, LLC;  
Canyon Sands Productions, Inc.; and  
Scott Sandsberry,**

**Respondents.**

**OAH Docket No. 2014-DFI-0002**

**Agency No. S-13-1159-13-SC01**

**FINDINGS OF FACT, CONCLUSIONS  
OF LAW, AND INITIAL ORDER**

**RIGHT OF APPEAL:** Any party to an adjudicative proceeding may file a Petition for Review of this Initial Order. Such a Petition for Review shall be filed with the Director of the Department of Financial Institutions **within twenty (20) days of the date of service of the Initial Order.** See the end of this order for further information.

**I. ISSUES PRESENTED**

- 1.1 Did Respondents Runaway Hearts Productions, LLC (herein "Runaway Hearts") and/or Canyon Sands Productions, LLC ("Canyon Sands") and/or Scott Sandsberry (herein "Mr. Sandsberry") sell and/or offer to sell securities, as defined in RCW 21.20.005, and if so, were said securities unregistered, in violation of RCW 21.20.140?
- 1.2 Did Respondent Scott Sandsberry sell and/or offer 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?
- 1.3 Did Respondents Runaway Hearts and/or Canyon Sands, and/or Mr. Sandsberry make untrue and/or misleading statements of material fact, or omission(s) of material fact, in connection with the offer and sale of securities, in violation of RCW 21.20.010?
- 1.4 Whether, pursuant to RCW 21.20.390, the Department of Financial Institutions (herein "Department") properly ordered Respondents Runaway Hearts, Canyon Sands and Scott Sandsberry, and their agents and employees, to cease and desist from any further violation of RCW 21.20.010, RCW 21.20.040, and RCW 21.20.140?
- 1.5 Whether, pursuant to RCW 21.20.110(4) and RCW 21.20.395, the Department may properly assess against Respondents jointly and severally a fine of \$5,000.00, and investigative costs of \$3,000.00?

## I. ORDER SUMMARY

1.1 Respondents Runaway Hearts, Canyon Sands and Mr. Sandsberry offered and sold "membership" interests in Runaway Hearts, which constitute securities as defined in RCW 21.20.005. These securities were unregistered, in violation of RCW 21.20.140.

1.2 Respondent Scott Sandsberry sold and/or offered to sell these securities while not registered as a securities broker-dealer or securities salesperson in the State of Washington, in violation of RCW 21.20.040.

1.3 Respondents Runaway Hearts, and/or Canyon Sands and/or Scott Sandsberry omitted material facts necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading, or made untrue, misleading statements of material fact in connection with the offer and sale of securities, in violation of RCW 21.20.010.

1.4 Pursuant to RCW 21.20.390, the Department properly ordered Respondents to cease and desist from offering or selling securities in any manner that violated RCW 21.20.010, RCW 21.20.040, and RCW 21.20.140.

1.5 Pursuant to RCW 21.20.110(4) and RCW 21.20.395, the Department may properly assess upon Respondents jointly and severally a fine of \$5,000.00, and investigative costs of \$3,000.00.

## II. HEARING

3.1 **Hearing Dates:** January 12-13, 2015; the record closed February 4, 2015, upon receipt of the parties' original post-hearing briefs, both mailed January 30, 2015.

3.2 **Administrative Law Judge:** Debra H. Pierce

3.3 **Respondents:** Runaway Hearts Productions, LLC, Canyon Sands Productions, LLC and Scott Sandsberry,

3.3.1 **Respondents' Representative:** M. Elizabeth de Bagara Steen

3.3.2 **Witnesses:** Scott Sandsberry, Respondent

3.4 **Agency:** Department of Financial Institutions ("the Department")

3.4.1 **Representative:** Ian McDonald, Assistant Attorney General

3.4.2 **Witnesses:**

3.4.2.1 Brian Guerard, Department Financial Legal Examiner

3.4.2.2 Jack McClellan, Financial Legal Examiner Supervisor

3.5 **Exhibits:** Department's Exhibits 1-22 and 24-32 (Exhibit 23 was withdrawn), and Respondents' Exhibits A-H were admitted. ALJ Exhibits 1 and 2 (the parties' witness and exhibit lists) were admitted. Post-hearing objections to admission of Exhibit 31 are overruled, and the motion to suppress is denied. Exhibit 31 is admitted over objection.

3.6 **Hearing Record:** The hearing was digitally recorded and preserved on compact disc.

### III. FINDINGS OF FACT

I find the following facts pursuant to the preponderance of the evidence standard:

#### A. Jurisdiction

4.1 On October 14, 2013, the Securities Administrator of the State of Washington signed and entered a Statement of Charges and Notice of Intent to Enter an Order to Cease and Desist, to Impose a Fine, and to Charge Costs against Respondents. See Ex. 30.

4.2 On or around November 8, 2013, Respondents submitted a timely application for an adjudicative hearing.

#### B. Runaway Hearts, Canyon Sands, and Scott Sandsberry

4.3 Runaway Hearts is a California limited liability company, formed in July, 2011. The principle place of business for the company is Yakima, Washington. Exhibit 3. The purpose of Runaway Hearts Productions, LLC is to develop, produce and exploit a feature-length theatrical motion picture project entitled "Runaway Hearts", which is based on a screenplay by Scott Sandsberry. Exhibit 7-20 and 32.

4.4 Scott Sandsberry has been a reporter, newspaper writer, and editor for roughly 40 years. He lives in Yakima, Washington. He has authored two novels, and served as executive producer on a feature film produced in 2001. He is also an independent scriptwriter, and in his promotional materials, features other film projects he is heading. Exhibit 5, page 11. Mr. Sandsberry was inspired to write a screenplay, and then develop, produce, and release an independent motion picture based on that screenplay. The screenplay and motion picture are entitled "Runaway Hearts." He began research and work on this project about 4 years ago. He completed the project, and at the time of hearing was in negotiation with distributors for release of the film.

4.5 Canyon Sands Productions, Inc. is a California corporation formed in November, 2010. Scott Sandsberry is the owner and President of Canyon Sands. Canyon Sands principle place of business is Yakima, Washington. Canyon Sands is the manager of Runaway Hearts Productions, LLC, with general supervision, direction, and control of that entity.

4.6 Mr. Sandsberry is also the organizer and managing member of UFO Canyon, LLC, a Louisiana holding company for Runaway Hearts Productions, LLC, designed to capture a Louisiana tax credit for filming the motion picture in that state. UFO Canyon is registered in Louisiana, where filming took place, so that the production could qualify for a tax incentive.

### **C. Offering and Solicitation For Sale of Membership Interests**

4.7 To fund the film-making venture, Scott Sandsberry, on behalf of Runaway Hearts Productions LLC, offered potential investors a financial interest in that company in exchange for capital investment. Exhibit 7-20, and 32. Investors paid substantial sums of money, via personal check, and received a "membership" in Runaway Hearts Productions, LLC upon signing a Runaway Hearts operating agreement. Mr. Sandsberry received capital investment funding of at least \$525,000 in exchange for Runaway Hearts, LLC membership interests. He invested in the film himself.

4.8 In return for the capital investment, members receive any available cash flow, until 115% of all capital contributions have been repaid, and thereafter, to the members in proportion with their share of the net profits. Canyon Sands receives 50% of the net profits. Investors receive their *pro rata* share of the remaining 50% of the net profits. Exhibit 7-20 and 32

4.9 Members have no managerial control of Runaway Hearts Productions, LLC. Exhibit 7-20 and 32. Investors contributed capital for the purpose of producing and distributing the motion picture "Runaway Hearts," with the expectation of receiving a profit on their investment only through the efforts of the managers.

4.10 Investments in Runaway Hearts, in exchange for a membership interest, were made almost exclusively by acquaintances, friends, and family of Mr. Sandsberry. He had a close relationship with some, but not all, of the potential investors. Some, he had not met prior to soliciting investment.

4.11 Mr. Sandsberry met with each potential investor in person, soliciting investment in Runaway Hearts in exchange for membership interests. He showed some potential investors a PowerPoint presentation which included descriptions of the film project, information about key persons working on the film, profit projections, and information about a Louisiana tax credit. He also gave information orally in the same meeting. He told potential investors they might not recoup their money.

4.12 Mr. Sandsberry also provided potential investors with a promotional packet. The packet also provided details about the project, information about key persons working on the film, profit projections, and information about the Louisiana tax credit.

4.13 In one part of Mr. Sandsberry's presentation, investors are given information about, and asked to consider the success of other small budget inspirational films, such as "Facing the Giants," "Fireproof," and "Courageous." On one slide, "Fireproof" showed a budget of \$500,000.00 with a box-office/DVD take of \$66,000,000.00. On another slide, "Courageous" showed a budget of \$22,000,000.00, with a box-office/DVD take of \$49,000,000.00. Each film had a theatrical release. The assumptions on which the comparison between these successful films and "Runaway Hearts" was made were not included in the presentation.

4.14 The promotional packet contains four different hypothetical scenarios of return on investment if "Runaway Hearts" is sold to a studio/distributor, projecting a range of possible sale amounts listed from low to high. All four hypothetical scenarios project a net profit on the sale of "Runaway Hearts" and an investment return to investors. The assumptions on which the projections were made are not provided, nor a basis for the projections.

4.15 Also included in the "Runaway Hearts" promotional packets were the average box office gross of low budget films. The materials indicated that since 2000, thirty-five low budget films have been released in theaters and that the average box-office gross for these films was \$5.1 million, roughly eleven times the average budget of \$480,700.00. The materials did not provide details on how many low budget films produced since 2000 did not receive a theatrical release, and were not included in the average box-office gross.

4.16 Featured prominently in the promotional materials are box-office successes "August Rush," "Winter's Bone," "The Tree of Life," "Facing the Giants," "Fireproof," and "Courageous." Exhibits 6 and 24. The potential for box-office success was touted in the promotional materials. No film not achieving a theatrical release was prominently featured; no film achieving success only in the "non-theatrical" market, such as DVD markets, was featured. The box-office impact of certain potential actors considered for roles in "Runaway Hearts" was emphasized in the PowerPoint. Exhibit 6.

4.17 While recognizing that Hollywood studios "typically shunned" family-friendly movies with a spiritual message in the past, the promotional materials explain that "over the last decade, indie film producers have changed that, and audiences have flocked to smaller-budget movies. . ." Exhibit 6, page 13. *Emphasis supplied.* The market for this motion picture genre does not depend on theatrical release, but "Runaway Hearts" was promoted as a film to be compared to other low budget films with successful theatrical release, and the promotional materials emphasize that "Runaway Hearts" is the type of film (like those successful films featured in the promotional material) which could achieve such success. See Exhibit 5, pages 5 and 7. The materials and PowerPoint

suggest that the success of the films featured in the promotional materials is based on genre and budget. No basis for such comparison is provided.

4.18 A generalized statement of risk was provided in the promotional packet. One page of the fourteen page promotional packet, entitled "The Risk to Investors" was included. That document provided information about the general risks of investment in the film industry. The name and address of attorney Paul S. Levine is on this risk statement. Exhibit A; Exhibit 5, page 10.

4.19 In the PowerPoint presentation the viewer is directed, by asterisk leading to a text line at the bottom of the page referring to statistical analysis, that "Industry statistics for all films for which budget and box office figures are available." Another slide says, "Every investment involves risk. This one is no exception."

4.20 When he began to solicit investment in the film, Scott Sandsberry talked to others in the industry and consulted a California lawyer, Mr. Levine, whom he understood to be an attorney experienced in the motion picture industry. Mr. Sandsberry produced the promotional materials, and consulted with Mr. Levine about the materials. Mr. Sandsberry did not make mailings, or solicit investments in any way other than in person. He did show the PowerPoint presentation to all investors. Some potential investors solicited did not invest. He turned down some investors who inquired because of their stated motivation in making the investment.

4.21 Mr. Sandsberry referred some investors to two film industry related websites for information about the movies featured in the presentation for comparison. The websites relate to movies which received a theatrical release. No information on whether the investors went to those websites to view information is available.

#### **D. Investors**

4.22 In presenting the opportunity to invest in Runaway Hearts, Mr. Sandsberry did not inquire into the details of any investor's personal financial status. He did not provide any investor with an audited financial statement. Runaway Hearts entered into investment agreements with the following individuals as specified below.

##### Brad Carpenter

4.23 Brad Carpenter, for Wildwood Farms Investment, LLC, invested \$15,000.00 and signed an operating agreement on April 23, 2012. Mr. Carpenter is a hops farmer, with whom Mr. Sandsberry has been acquainted for a number of years because, as a sportswriter, he covered the Carpenter children in high school sports. Mr. Sandsberry assumed Mr. Carpenter was an accredited investor because of his occupation.

##### Hamilton and Carol Licht

4.24 Also on April 23, 2012, Hamilton and Carol Licht invested \$10,000.00 and signed an operating agreement with Runaway Hearts. Mr. Licht is an oncologist. Mr. Sandsberry did not know nor ask about the Lichts' assets or income. Mr. Sandsberry knew of Mr. Licht because of his involvement in community news events covered by Mr. Sandsberry.

Janie Plath

4.25 Janie Plath signed an operating agreement with Runaway Hearts, and invested \$15,000.00 on April 25, 2012. Ms. Plath is a member of a family generally known to Mr. Sandsberry because of their connection with Washington Fruit, a well-known company in the Yakima area. Mr. Sandsberry believes Ms. Plath's family is in the ownership structure of that company in some way. He assumed Ms. Plath has money; he had not met her personally prior to having been given a referral to her as a possible investor. She manages a non-profit, and Mr. Sandsberry guessed that she puts \$250,000 a year in it. Rhonda Sandsberry, Scott Sandsberry's wife, knows Ms. Plath's family.

Jane Gargas

4.26 Jane Gargas is a work associate of Mr. Sandsberry's. She came to him and offered to invest \$10,000.00 in Runaway Hearts. He advised her that she could lose the money. She told him that she could afford to lose it because her husband was a medical practitioner, and is connected with a chain of medical clinics. Mr. Sandsberry assumed that Ms. Gargas' husband was "well-to-do," once he was informed of his occupation, but he knows no details of Ms. Gargas' financial status or investment history. Her participation agreement is dated May 1, 2012.

John and Marla Borton

4.27 John Borton and Marla Borton invested separately. John Borton invested \$75,000.00 and signed a participation agreement on May 10, 2012; Marla Borton invested \$20,000.00 and signed a participation agreement on May 3, 2012. Mr. Sandsberry has known the Bortons for years. Mr. Borton is a "major player" in Yakima business. His company, Borton Fruit, is "massive." They are reputed to be "multi-millionaires." Mr. Sandsberry did not inquire as to their income, assets or investment history.

Gary Long (for an educational trust)

4.28 Gary Long is a friend of Mr. Sandsberry. He invested in Runaway Hearts to create an educational trust. On May 3, 2012, an operating agreement was signed by Mr. Long and the trustee, indicating an investment of \$100,000.00, total, was made. Mr. Sandsberry never asked about Mr. Long's financial condition or income, because he knows Mr. Long's reputation as one of the "most wealthy people in Yakima County." He

knows Mr. Long sells internationally as G.S. Long Projects. Mr. Sandsberry was aware that Mr. Long invests frequently and has investment acumen.

#### Truhler Family

4.29 On May 9, 2012, a friend of Mr. Sandsberry, Brandon Truhler, signed an operating agreement giving him a membership interest in Runaway Hearts in return for an investment of \$20,000.00. Mr. Truhler was a successful mortgage broker, and now owns rental property, but Mr. Sandsberry does not know the details of Mr. Truhler's holdings or income. Mr. Sandsberry knew Mr. Truhler because the Sandsberrys purchased a home from the Truhlers. Terry Truhler, and his wife, Sharon, Brandon's parents, also executed an operating agreement, and invested \$30,000.00. Financial information was not collected by Mr. Sandsberry for any of the Truhlers.

#### John Anderson

4.30 John Anderson invested \$10,000.00 in Runaway Hearts, and signed an operating agreement on May 12, 2012. Mr. Anderson is a financial investor. He is the father of a friend Mr. Sandsberry has known for thirty years. Mr. Anderson approached Mr. Sandsberry about the investment when he overheard conversation about the project. Mr. Sandsberry did not inquire into Mr. Anderson's financial status or income; he relied on his assumption that Mr. Anderson is a wealthy individual.

#### Kinloch Family

4.31 Mr. Sandsberry has been acquainted with Jon Kinlock for many years. This family is connected to the Borton family, and Mr. Sandsberry assumes anyone connected with the Borton family is wealthy. Mr. Sandsberry knows that Mr. Kinlock manages Appletree Golf Course, but he doesn't know about his finances, and can only guess about his income. Mr. Sandsberry did not ask for financial information. The Kinlocks invested as a family, with Barbara Kinlock, John Kinlock's mother, signing the participation agreement.

#### Kyle Shinn

4.32 Mr. Sandsberry does not know Kyle Shinn personally. The Carpenters, investors and acquaintances of Mr. Sandsberry, referred Mr. Sandsberry to Mr. Shinn. Mr. Sandsberry contacted Mr. Shinn because of the referral, with the intention of offering Mr. Shinn an opportunity to invest in Runaway Hearts. Based on his reputation as a hops farmer, Mr. Sandsberry did not inquire into Mr. Shinn's investment history, acumen or financial information; he assumed Mr. Shinn was wealthy. Mr. Shinn invested \$20,000.00 and signed a participation agreement on May 14, 2012.

#### Cindy MacNider and Karen MacKichan

4.33 Cindy MacNider and Karen MacKichan invested a total of \$20,000.00 in Runaway Hearts, and signed a participation agreement on May 18, 2012. Mr. Sandsberry knew the occupation of each, and assumed they are well-off, financially. Ms. MacNider used to work at Appletree Golf Course, and her partner is a nephrologist. When Mr. Sandsberry pointed out that they could lose money, they said they wanted to be a part of the project anyway. Mr. Sandsberry concluded they had the money to invest, and did not gather any financial information or investment history.

Michael and Cheryl Smith

4.34 Michael and Cheryl Smith are hops farmers and operate a brewery. Mr. Sandsberry did not get financial information from these investors, but assumed they were wealthy because of their businesses. From the conversation he had with Mr. Smith, Mr. Sandsberry believed Mr. Smith made numerous investments. The Smiths invested \$25,000.00 in Runaway Hearts and signed a participation agreement on May 21, 2012. Mr. Carpenter also referred Mr. Sandsberry to the Smiths.

Garth Jackson

4.35 Garth Jackson is a long-time friend of Mr. Sandsberry, and lives in New Mexico. He invested in Runaway Hearts, also. Mr. Jackson retired at age forty-two and told Mr. Sandsberry he is a multi-millionaire, with a net worth of more than three million dollars, excluding his home. He invests "all the time."

Lynne Sandsberry

4.36 Lynne Sandsberry is Scott Sandsberry's sister. Mr. Sandsberry knows that his sister is a sophisticated investor, but does not know her assets or her income at the time she invested. She invested \$20,000.00 and signed a participation agreement May 24, 2012.

**E. Registration Status**

4.37 Runaway Hearts Productions, LLC was not registered to sell its securities in the State of Washington and had not previously been so registered at the time the Statement of Charges was issued on October 14, 2013, or at the time membership interests were issued in the operating agreements signed by the investors in exchange for the money received as capital investment in the entity. Further, it had not filed a claim of exemption from registration.

4.38 At the time membership interests in Runaway Hearts were issued, and at the time the Statement of Charges was issued, Canyon Sands Productions, Inc. was not registered as a broker-dealer in the State of Washington, and had not previously been so registered.

4.39 Scott Sandsberry is not registered as a securities salesperson or broker-dealer in the State of Washington and has not previously been so registered.

#### **F. Procedural History**

4.40 In response to an anonymous complaint received January 13, 2013, the Department commenced an investigation, conducted by Department Financial Legal Examiner, Attorney Brian Guerard.. Mr. Guerard did not speak with any investors in Runaway Hearts, nor did he establish, or attempt to establish the identity of the writer of the anonymous complaint, which was comprised of a Post-It Note on which is handwritten, "Is this legal? I would like my money back," and a clipping of a news article about the movie and Mr. Sandsberry.

4.41 Mr. Guerard identified the individuals and entities involved with the film; he checked for registration of any of the entities he identified. After identifying Runaway Hearts Productions, LLC, Canyon Sands Productions, LLC and UFO Canyon, and verifying the ownership of the entities, he wrote to Mr. Sandsberry, advising him of the law, and to cease and desist. Exhibit 1.

4.42 Upon receiving the complaint, Mr. Sandsberry spoke with Mr. Guerard, and provided documents requested by Mr. Guerard. Mr. Sandsberry was cooperative and helpful in the investigation. Mr. Sandsberry provided information about the corporate entities involved, investors in Runaway Hearts, the business purpose of Runaway Hearts, and his promotional materials. Exhibits 4, 5, 6 and 24. Mr. Sandsberry indicated his intention to comply with regulations.

4.43 After reviewing all of the documentation and information given, Mr. Guerard determined that the operating agreements and membership interests conveyed were an investment contract for passive investment. He also concluded that Mr. Sandsberry was not a registered salesman, and Runaway Hearts and Canyon Sands did not register the securities. Further, there he found that no exemption was filed.

4.44 On October 14, 2013, the 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 (herein "Statement of Charges"). Exhibit 30. Runaway Hearts, Canyon Sands and Mr. Sandsberry' appealed the Statement of Charges, and this appeal was assigned to the Office of Administrative Hearings (OAH) to commence the hearing process.

4.45 The fine identified in the Statement of Charges is \$5,000.00. The Department did not impose the maximum fine of \$10,000.00 per occurrence, noting Mr. Sandsberry's cooperation and lack of ill-intent. Costs of the administrative investigation and hearing of "not less than \$3,000.00" were assessed.

4.46 The Department invested 84.25 attorney hours investigating the Runaway Hearts complaint, drafting legal documents, and preparing for the hearing before the OAH.

Exhibit 22, page 5. Attorney hours are billed by the Department at \$125.00 per hour. The Department seeks reimbursement for only 24 hours at \$125.00 per hour, or \$3,000.00. In its discretion, the Department reduced the amount of costs sought to \$3,000.00.

4.47 After the Statement of Charges was served, the Respondents attorney, Barbara Prowent, caused a Form D to be filed with the SEC on November 15, 2013, and also with the Washington State Department of Financial Institutions. Exhibit 25. The Respondents sought exemption or exclusion of the registration requirements of Rule 504(b)(1), Rule 505 and Rule 506(b). On the form signed by Mr. Sandsberry, he indicated that at least one of the investors who had already invested was not accredited. *Id.*

## IV. CONCLUSIONS OF LAW

### A. Jurisdiction

5.1 I have jurisdiction over the persons and subject matter in this matter under Revised Code of Washington (RCW) chapters 21.20 and 34.05, and Washington Administrative Code (WAC) Chapter 208-08.

### **B. The membership interests and operating agreement with Runaway Hearts, given in exchange for capital investment by Mr. Sandsberry through Canyon Sands for Runaway Hearts were securities under Chapter 21.20 RCW.**

5.2 "Security' means any note; stock; . . . evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement;. . . investment contract; . . . investment of money or other consideration in the risk capital of a venture with the expectation of some valuable benefit to the investor where the investor does not receive the right to exercise practical and actual control over the managerial decisions of the venture; ... any option...on any security; or any . . . guarantee of . . . any security under this subsection." RCW 21.20.005(17)(a)(in pertinent part).

5.3 The test regarding whether an instrument constitutes an investment contract, and thus a security, contains three elements: (1) an investment of money, (2) in a common enterprise, (3) with an expectation of profits from the efforts of the promoter or a third party. *State v. Philips*, 108 Wn.2d 627, 630, 741 P.2d 24 (1987) (citing *S.E.C. v. W. J. Howey Co.*, 328 U.S. 293, 66 S. Ct. 1100, 90 L.Ed. 1244 (1946)). See also *Cellular Engineering v. O'Neill*, 118 Wn. 2d 16, 25-26, 820 P.2d 941(1991).

5.4 The investors listed above invested large sums of money to secure a membership interest in a common enterprise, i.e. developing, producing and exploiting the motion picture "Runaway Hearts," with the expectation that Runaway Hearts would be sold, or attain a theatrical release, or both. The promotional materials emphasized

the profitability of low budget, faith-based, family-friendly films, fostering an expectation that the members would share in the profits. No investor was expected to contribute anything but capital to the enterprise, and the agreement specified the managers of the company. Consequently, the membership interests and operating agreement of Runaway Hearts issued to the above investors constituted investment contracts, and thus securities, under RCW 21.20.005.

### **C. Mr. Sandsberry “offered” and “sold” securities of Runaway Hearts for Runaway Hearts and Canyon Sands.**

5.5 A “sale” or “sell” includes “every contract of sale of, contract to sell, or disposition of, a security or interest in a security for value. “Offer” or “offer to sell” includes every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security for value.” RCW 21.20.005(14).

5.6 A “salesperson” is any individual, other than a broker-dealer, who represents a broker-dealer or issuer in effecting or attempting to effect sales of securities. “Salesperson” *does not include an individual who represents an issuer in a security exempted by RCW 21.20.310 or effecting transactions exempted by RCW 21.20.320 unless otherwise expressly required by the terms of the exemption or effecting transactions with existing employees, partners, or directors of the issuer.* RCW 21.20.005(15).

5.7 A “broker-dealer” means any person engaged in the business of effecting transactions in securities for the account of others or for that person’s own account. RCW 21.20.005(1).

5.8 Mr. Sandsberry offered to sell securities of Runaway Hearts when he presented promotional materials and contacted individuals for the purpose of proposing an operating agreement with a “non-managing membership interest” in Runaway Hearts in exchange for a capital investment. He sold securities when investors contributed capital in return for the membership interest and operating agreement in his capacity as a salesperson and broker-dealer for Runaway Hearts.

### **D. Registration Requirements**

5.9 “It is unlawful for any person to offer or sell any security in this state unless: (1) The security is registered by coordination or qualification under this chapter; (2) the security or transaction is exempted under RCW 21.20.310 or 21.20.320; or (3) the security is a federal covered security, and, if required, the filing is made and a fee is paid in accordance with RCW 21.20.327.” RCW 21.20.140. Accordingly, the security transaction must either be registered, exempt from registration pursuant to subsection (2), or a federal covered security as contemplated by subsection (3) for which the filing is made and the fee paid.

5.10 It is unlawful for any person to transact business in this state as a broker-dealer or salesperson, unless the person is registered under Chapter 21.20 RCW. RCW 21.20.040. The statutory exemptions to this registration requirement set out in RCW 21.20.040(1) do not apply in this case.

5.11 The burden of proving an exemption under Chapter 21.20 RCW is upon the person claiming it. RCW 21.20.540. It is undisputed that Mr. Sandsberry is not registered as a broker-dealer or a salesperson, and Runaway Hearts did not register its securities at or before the time of sale.

**E. Respondents do not qualify for exemption from registration requirements.**

5.12 RCW 21.20.310 provides exemptions for certain guaranteed, employment related or government back securities. It is not contended that the Respondents qualifies for any of the exemptions under this provision.

5.13 RCW 21.20.320 provides an exemption from the registration requirements of RCW 21.20.040 through 21.20.300 and 21.20.327 except as expressly provided:

(1) Any isolated transaction, or sales not involving a public offering, whether effected through a broker-dealer or not; or any transaction effected in accordance with any rule by the director establishing a nonpublic offering exemption pursuant to this subsection where registration is not necessary or appropriate in the public interest or for the protection of investors.

...

(9) Any transaction effected in accordance with the terms and conditions of any rule adopted by the director if:

- (a) The aggregate offering amount does not exceed five million dollars; and
- (b) The director finds that registration is not necessary in the public interest and for the protection of investors.

...

(17) Any transaction effected in accordance with any rule adopted by the director establishing a limited offering exemption which furthers objectives of compatibility with federal exemptions and uniformity among the states, provided that in adopting any such rule the director may require that no commission or other remuneration be paid or given to any person, directly or indirectly, for effecting sales unless the person is registered under this chapter as a broker-dealer or salesperson.

RCW 21.20.320 (in pertinent part)

**a. The offering of Runaway Hearts securities was a public offering and not exempt under RCW 21.20.320(1).**

5.14 An offering is exempt from registration requirements under RCW 21.20.320(1) if the offering is not a public offering. To qualify for this exemption, the offering must have been made in compliance with Section 4(a)(2) of the federal Securities Act of 1933 and the Securities and Exchange Commission (SEC) Securities Act Release No. 33-4552. WAC 460-44A-050(2). Further, the private offering exemption requires that all persons to whom offers are made have financial sophistication and are provided with or have access to the type of information that would be contained in a registration statement. *SEC v. Ralston Purina Co.*, 346 U.S. 119, 125-127 (1953).

5.15 A general solicitation to an unrestricted and unrelated group of prospective investors is inconsistent with a claim that the transactions at issue do not involve a public offering. For a transaction to be considered a private offering, a preexisting relationship between the issuer and offerees must exist, and *be of such substance and duration to allow the issuer to properly evaluate the offerees' financial standing and sophistication*. This is true, even when the offeree possesses some degree of sophistication and wealth. See *Woodtrails-Seattle, Ltd.*, 1982 SEC No-Act. LEXIS 2662.

5.16 Respondent engaged in general solicitation of potential investors with whom he had no close relationship, and no certain or detailed knowledge of their financial status or investment history. No substantial preexisting relationship existed between Mr. Sandsberry and the Smiths, or Kyle Shinn. He had not met Janie Plath prior to being referred to her to present an offer. In addition, a relationship of such depth and duration allowing Mr. Sandsberry an opportunity to evaluate the offerees' actual financial standing and sophistication was not shown with respect to Jane Gargas, the Truhler family, Hamilton and Carol Licht, Cindy MacNider and Karen MacKichan and Gary Long. With few exceptions, Mr. Sandsberry's only impressions of the offerees' income and assets were based on reputation in the community. The Respondents did not carry their burden of establishing, by a preponderance of the evidence that such a relationship existed between Mr. Sandsberry, and any of the offerees, except his sister and Garth Jackson. Because no substantial, preexisting relationship, of the character and duration necessary to support an evaluation of financial standing and sophistication, was shown to exist between Mr. Sandsberry and the offerees, the offering does not qualify as a private offering under RCW 21.20.320(1) and the Securities Act of 1933 §4(a)(2). The general solicitation for the offering also disqualifies the Respondents from an exemption under Federal Rule 506.

5.17 Application of the criteria of §4(a)(2) also considers whether investors are financially sophisticated, or have sufficient expertise in financial and business matters sufficient to enable them to evaluate merits and risks of the investment. See *Mark v. FSC Securities Corp.*, 870 F.2d 331 (6<sup>th</sup> Cir. 1988) (citing *Lively v. Hirschfeld*, 440 F. 2d

631, 633 (10<sup>th</sup> Cir. 1971) for the proposition that "evidence that the individual plaintiffs had substantial investment experience is simply not sufficient to justify an exemption under §4(a)(2)". It has not been established that the investors were sophisticated. Mr. Sandsberry knew of the investment experiences of only a few of the investors. He knew nothing at all about the investing experience of some, and only what he assumed to be true with regard to most.

5.18 There is no credible proof, by a preponderance of the evidence, that the offerees had access to registration-type information on which an investment decision could be based. Respondents have not established that they qualify for an exemption from registration requirements under RCW 20.21.320(1).

**b. Respondents are not exempt from registration requirements under RCW 21.20.320(9) and (17).**

5.19 An exemption would be established under RCW 21.20.320(17) and WAC 460-44A-300(2) if the offer or sale "of a security by an issuer in a transaction that meets the requirements of this rule and any exemption adopted by the Securities and Exchange Commission pursuant to Section 3(b) of the Securities Act of 1933 which provides for public solicitation of accredited investors. . .". WAC 460-44A-300(2).

5.20 An exemption is available pursuant to RCW 21.20.320(9), if the offers and sales meet certain criteria outlined in WAC 460-44A-504. One of the criteria is compliance with the Securities Act of 1933, Regulation D, Rules 230.501 through 230.504 and 230.508. While the Respondents did file a form D on November 13, 2013, one month after the Department filed its Statement of Charges, and more than a year after the last sale, the filing does not qualify the Respondents for exemption. The filing is required no later than fifteen days after the first sale of securities. WAC 460-44A-503. Further, the Respondents do not qualify for exemption under 460-44A-504(3)(d), which provides:

"In all sales to nonaccredited investors in this state under this section the issuer and any person acting on its behalf shall have reasonable grounds to believe and **after making reasonable inquiry** shall believe that, as to each purchaser, one of the following conditions, (i) or (ii) of this subsection, is satisfied:

(i) The investment is suitable for the purchaser upon the basis of the facts, if any, disclosed by the purchaser as to his other security holdings and as to his financial situation and needs. For the purpose of this condition only, it may be presumed that if the investment does not exceed ten percent of the purchaser's net worth, it is suitable. This presumption is rebuttable; or

(ii) The purchaser either alone or with his purchaser representative(s) has such knowledge and experience in financial and business matters that he is or they are capable of evaluating the merits and risks of the prospective investment."

5.21 The Respondents have not shown that the investors were accredited, as defined in WAC 460-44A-501, or that he reasonably believed they were accredited. An accredited investor includes any natural person whose individual net worth exceeds \$1,000,000.00 not including primary residence, any natural person who had an individual income in excess of \$200,000 or joint income with that person's spouse in excess of \$300,000, a trust with total assets in excess of \$5,000,000.00, or who the issuer reasonably believes comes within any of these categories. *Id.*; 17 CFR 230.501(a). Mr. Sandsberry simply did not inquire, and did not know that he should. No evidence sufficient to determine the accreditation status of the investors was produced in hearing. The preponderance of the evidence does not establish that the investors in Runaway Hearts were accredited. The Respondents have not established that they are qualified for an exemption from registration requirements pursuant to RCW 21.20.320(9) and (17).

5.22 Additionally, the preponderance of the evidence does not establish that Respondents fulfilled the notice requirements of Fed. Rule 502(b)(1), or the disclosures required by 17CFR 502(b)(2)(vii). Respondents have not met the burden of showing that they provided non-accredited investors with all of the written disclosure required in order to claim an exemption under Federal Rule 506.

5.23 Respondents did not meet their burden of establishing that these securities were exempt under RCW 21.20.310 and/or 21.20.320. In addition, even if these securities were federal covered securities under Section 18(b) of the Securities Act of 1933, Respondents did not make the required filing and pay the required fee for federal covered securities, in accordance with RCW 21.20.327. Consequently, Washington law requires registered under RCW 21.20.140. Although Runaway Hearts' legal counsel may not have advised Runaway Hearts to register these securities, they were nonetheless required to be registered prior to sale. Runaway Hearts, Canyon Sands and Mr. Sandsberry's failure to register them amounts to a violation of RCW 21.20.140.

5.24 Mr. Sandsberry solicited and sold securities on behalf of Runaway Hearts to the above-listed investors. Consequently, Mr. Sandsberry was required to be registered with the State of Washington as a broker-dealer and/or salesperson under RCW 21.20.040, qualify for an exemption. He did not qualify for an exemption. Mr. Sandsberry offered and sold securities without registering as a broker-dealer or salesperson, in violation of RCW 21.20.040. Because he was not registered as such at the time he solicited and sold securities to the above-listed investors, Mr. Sandsberry violated RCW 21.20.040.

**F. Runaway Hearts and Mr. Sandsberry, for Canyon Sands, made untrue statements of material fact or omitted statements of material fact in connection with the offer, sale and purchase of securities.**

5.25 "It is unlawful for any person, in connection with the offer, sale or purchase of any

security, directly or indirectly; (1) To employ any device, scheme, or artifice to defraud; (2) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or (3) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person." RCW 21.20.010.

5.26 An omission is material if it is substantially likely that a reasonable investor would find that disclosure of the omitted fact would have significantly altered the available information. *TSC Industries, Inc., v. Northway, Inc.*, 426 U.S. 438, 449, 96 S.Ct. 2126, 48 L.Ed.2d 757 (1976).

5.27 A fact is "material" if a reasonable person would attach importance to that fact when determining a course of action in a transaction. *H. P. Clausing v. DeHart*, 83 Wn. 2d 70, 73, 515 P.2d 982 (1973).

5.28 "[A] violation of RCW 21.20.010(2) does not require a specific intent to defraud. The making of an untrue statement is sufficient." *State v. Cox*, 17 Wn.App. 896, 902, 566 P.2d 935 (1977).

5.29 If there is a duty to disclose, silence as to or "suppression of a material fact is tantamount to an affirmative misrepresentation." *Kass v. Privette*, 12 Wn.App. 142, 147, 529 P.2d 23 (1974) (citations omitted).

5.30 An omission of citations to source material which bolsters the factual claims of the issuer/seller of a security is significant in that "failure to discuss the risks and hazards of [investigating], while focusing on the benefits that could be obtained, is evidence [of] acting contrary to RCW 21.20.010(2)." *State v. Stemmer*, 48 Wn.App.48, 54,738 P.2d 281(1987).

5.31 It is well established that the securities act requires only proof of the sellers' material misrepresentation or omission; it does not require proof of the sellers' intent to defraud. *Go2Net, Inc. v. Free Yellow.com, Inc.*, 158 Wn.2d 47, 253, 143 P.3d 590 (2006) (en banc)(citing *Kittleson v. Ford*, 93 Wn.2d 223, 225, 608 P.2d 264 (1980)); See also *State v. Cox*, 17 Wn.App. 896, 902, 566 P.2d 935 (1997).

5.32 Mr. Sandsberry's PowerPoint presentation to prospective investors features the success of other smaller-budget inspirational films such as "Facing the Giants," "Fireproof," and "Courageous," in comparison to his own film. The purpose of the presentation was to provide information about the "Runaway Hearts" movie and to entice investment in the movie. The PowerPoint presentation lacks any disclosure as to a reasonable basis of a comparison of "Runaway Hearts" within the inspirational film genre. The materials omit mention that these successful films are atypical within the genre. The materials focus comparisons between the returns of these movies and "Runaway Hearts," without disclosure of how the box office success of three films in the

same genre as "Runaway Hearts" would or could be affected by other factors. No reasonable basis for advertising the box office figures of these movies in comparison to "Runaway Hearts" was shown to investors.

5.33 Potential investors were shown four specific scenarios which projected a range of possible sale amounts. Exhibit 5, page 9. All four hypothetical scenarios projected a net profit on the sale of "Runaway Hearts" and an investment return to investors. *Id.* The returns include a worst case scenario of 20% (low) and a best case scenario of 207.5% (high). *Id.* No reasonable basis for any of these numbers is provided. The promotional packet contains no cautionary language regarding the projections specific to the hypothetical scenarios. Blanket disclosures of risk are inadequate in the context of particularized profit projections, as investors were given in this case. *In re Worlds of Wonder Securities Litigation*, 814 F. Supp. 850, 858 (N.D.Cal.1993) (*aff'd* in relevant part by 35 F.3d 1407 (9<sup>th</sup> Cir. 1994)).

5.34 No projections of a scenario in which the film is not sold for less than the cost of its productions is included. Investors were not provided with the data underlying the "possible financial future for "Runaway Hearts," as described in the promotional materials.

5.35 The promotional materials included information about "Why Lower-Budget Films Are the Most Consistent Home Runs." The promotional material compares "Runaway Hearts" budget to other low-budget films, but the comparison includes information about the average box-office returns of only films which received a theatrical release. Exhibit 5, page 7. No cautionary disclosure was made to potential investors that "Runaway Hearts" is not guaranteed a theatrical release nor does it set forth a reasonable basis for not comparing "Runaway Hearts" returns to all low-budget films, including those which do not receive a theatrical release, a distribution deal, or recover costs. The methodology underlying the numbers on which Respondents' asked investors to rely in making their investment decision was not disclosed to offerees and investors. It omitted material facts necessary in order to make the statements made, in light of the circumstances, not misleading

5.36 Although Mr. Sandsberry may have had good intentions with regard to Runaway Hearts investors, and attempted to comply with regulations, Mr. Sandsberry made misleading statements and omissions of material fact regarding the prospects for financial success of "Runaway Hearts" and the risk to investors, in violation of RCW 21.20.010.

**G. The Department properly ordered Mr. Sandsberry and Runaway Hearts to cease and desist violating Chapter 21.20 RCW.**

5.19 If the Department determines "that any person has engaged or is about to engage in any act or practice constituting a violation of this chapter or any rule or order hereunder," the Department may "[i]ssue an order directing the person to cease and

desist from continuing the act or practice". RCW 21.20.390(1).

5.20 As held above, Runaway Hearts, Canyon Sands, and/or Mr. Sandsberry violated RCW 21.20.140, RCW 21.20.040, and RCW 21.20.010. Accordingly, the Department properly ordered Mr. Sandsberry, Canyon Sands and Runaway Hearts to cease and desist from this unlawful conduct.

**H. The Department may properly assess upon Mr. Sandsberry and Runaway Hearts, jointly and severally, a fine of \$5,000.00, and costs of \$3,000.00.**

5.21 "A person who, in an administrative action by the director, is found to have knowingly or recklessly violated any provision of this chapter, may be fined, after notice and opportunity for hearing, in an amount not to exceed ten thousand dollars for each violation." RCW 21.20.395; RCW 21.20.110(4). In any action under this section, the director may charge the costs, fees, and other expenses incurred by the director in the conduct of any administrative investigation, hearing, or court proceeding against any person found to be in violation of any provision of this section.... RCW 21.20.390(5).

5.22 "Person" means an individual, a corporation, a partnership, a limited liability company, a limited liability partnership, an association, a joint-stock company, a trust where the interest of the beneficiaries are evidenced by a security, an unincorporated organization, a government, or a political subdivision of a government. RCW 21.20.005(12).

5.23 Here, Mr. Sandsberry, Canyon Sands and Runaway Hearts violated RCW 21.20.010, RCW 21.20.040, and RCW 21.20.140, all as held above. The Department thus properly exercised its discretion in asserting a fine of \$5,000.00, and \$3,000.00 in administrative costs to Mr. Sandsberry, Canyon Sands and Runaway Hearts, jointly and severally, pursuant to RCW 21.20.390 and RCW 21.20.395.

## V. INITIAL ORDER

IT IS HERBY ORDERED:

5.1 Respondents Runaway Hearts, Canyon Sands and Mr. Sandsberry offered and sold investment contracts which constitute securities as defined in RCW 21.20.005, and which were unregistered, in violation of RCW 21.20.140.

5.2 Respondent Mr. Sandsberry 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.

5.3 Respondents Runaway Hearts, Canyon Sands and Mr. Sandsberry 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.

5.4 Under RCW 21.20.390, the Department properly ordered Respondents to cease and desist from offering or selling securities in any manner that violated RCW 21.20.010, RCW 21.20.040, and ROW 21.20.140.

5.5 Under RCW 21.20.110(4) and RCW 21.20.395, the Department's assessment against Mr. Sandsberry, Canyon Sands and Runaway Hearts, jointly and severally, of a fine of \$5,000.00 and administrative fees of \$3,000.00 is **AFFIRMED**. Mr. Sandsberry and Runaway Hearts are **ORDERED** to pay to the Department jointly or severally a fine of \$5,000.00 and fees of \$3,000.00.

**Signed and Issued** at Tacoma, Washington, on the date of mailing.



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Debra H. Pierce  
Administrative Law Judge  
Office of Administrative Hearings

### APPEAL RIGHTS

Under RCW 34.05.464 and WAC 10-08-211, any party to an adjudicative proceeding may file a Petition for Review of this Initial Order. **Such a Petition for Review shall be filed with the Director of the Department of Financial Institutions within twenty (20) days of the date of service of the Initial Order.** The address for filing the Petition for Review is:

Director  
Department of Financial Institutions  
PO Box 41200  
Olympia, WA 98504-1200.

Copies of the Petition for Review shall be served upon all other parties or their representatives at the time the Petition for Review is filed with the Director.

The Petition for Review shall specify the portions of the Initial Order to which exception is taken and shall refer to the evidence in the record which is relied upon to support the Petition for Review.

Any party may file a Reply to a Petition for Review. Replies shall be filed with the

Director within ten (10) days of the date of service of the Petition for Review and copies of the Reply shall be served upon all other parties or their representatives at the time the Reply is filed with the Director.

After 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.

**CERTIFICATION OF MAILING IS ATTACHED**



State of Washington  
**DEPARTMENT OF FINANCIAL INSTITUTIONS**

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

RUNAWAY HEARTS PRODUCTIONS,  
LLC; CANYON SANDS PRODUCTIONS,  
INC.; and SCOTT SANDSBERRY,

Respondents.

Order No. S-13-1159-15-FO01  
[OAH No. 2014-DFI-0002]

FINAL DECISION & ORDER DENYING  
PETITION FOR REVIEW AND  
AFFIRMING INITIAL DECISION AND  
ORDER OF ADMINISTRATIVE LAW  
JUDGE

THIS MATTER was commenced on October 14, 2013, 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, RUNAWAY HEARTS PRODUCTIONS, LLC (hereinafter, "Runaway Hearts"), CANYON SANDS PRODUCTIONS, INC. (hereinafter, "Canyon Sands"), and SCOTT SANDSBERRY (hereinafter, "Sandsberry") alleging that Runaway Hearts, Canyon Sands, and Sandsberry violated the Securities Act of Washington, Chapter 21.20 RCW (hereinafter, "Act") and that their violation of the Act justified the entry of an Order to Cease and Desist under RCW 21.20.390 against each of the Respondents and the imposition of a fine and costs against each of them under RCW 21.20.395.

1.0 PROCEDURAL HISTORY

On October 14, 2013, the Division of Securities, by and through its Division Director, William M. Beatty, issued the Statement of Charges. The Respondents made a Request for

Administrative Hearing, and the Statement of Charges was thereafter referred to the Office of Administrative Hearings (hereinafter, "OAH") for adjudication. Thereafter, OAH assigned this matter for hearing or other disposition before Administrative Law Judge Debra H. Pierce (hereinafter, "ALJ Pierce").

The adjudicative hearing was conducted January 12-13, 2015, before ALJ Pierce; and as the Initial Order indicates (Paragraph 3.1 at Page 2), both parties submitted Post-Hearing Briefs by mail on January 30, 2015. Respondents were represented before ALJ Pierce and on Petition for Review by M. Elizabeth de Bagara Steen, Esq. (hereinafter, "Ms. Steen"). The Division of Securities was represented before ALJ Pierce and in its Response to Petition for Review by Ian McDonald, Esq., Assistant Attorney General (hereinafter, "AAG McDonald").

The Initial Order was issued and served by mail on Monday, March 23, 2015.

Ms. Steen thereafter filed Respondent's Petition for Review of Initial Order (hereinafter, "Petition for Review"). The Certificate of Service, signed by Ms. Steen and appended to the Petition for Review, has a date of April 15, 2015, purportedly indicating service upon this Director and opposing counsel, AAG McDonald.

According to the Declaration of Brian Guerard in Support of Division's Response to Respondents' Petition for Review (hereinafter, "Declaration of Brian Guerard"):

(1) The Department received a Fax Transmission of the Petition for Review after 5:00 P.M. on April 15, 2015, which was forwarded to the Division of Securities the morning of April 16, 2015; and

(2) The Department also received a copy of the Petition for Review by First Class Mail, the envelope of which shows a postmark of Thursday, April 16, 2015, from Seattle,

Washington. This envelope also bears a “received stamp” of the Division of Securities of Monday, April 20, 2015.

However, notwithstanding the Declaration of Brian Guerard, it appears from the cover sheet of the Fax Transmission itself that the Petition for Review was received at 00:38 GMT (Greenwich Mean Time) on Thursday, April 16, 2015, which is actually 4:38 PM Pacific Time, on Wednesday, April 15, 2015, which is actually just prior to the 5:00 PM close of business for the Department on Wednesday, April 15, 2015.

On April 20, 2015, Mr. McDonald filed with the Director and served Ms. Steen by mail the Division’s Response to Respondents’ Petition for Review (hereinafter, “Response to Petition for Review”), challenging as *untimely* the Petition for Review.

## 2.0 RECORD ON REVIEW

Since there is an immediate and controlling issue of *untimeliness* raised by the Division in its Reply to the Petition for Review, the Record on Review before the Director is limited, as follows:

- 2.1 Statement of Charges;
- 2.2 Initial Order;
- 2.3 Petition for Review;
- 2.4 Fax Transmission of Petition for Review (including Fax Coversheet from Ms. Steen);
- 2.5 Response to Petition for Review; and
- 2.6 Declaration of Brian Guerard.

### 3.0 DIRECTOR'S CONSIDERATIONS

3.1 Based upon the Record on Review (Section 2.0 above), Ms. Steen did not even attempt to file the Petition for Review until 00.38:33 GMT (i.e., 4:38 PM Pacific Time) on Wednesday, April 15, 2015, by sending a Fax Transmission to the general Fax Number of the Department with a copy of the Petition for Review. This Fax transmission was not forwarded to the Division of Securities until the morning of April 16, 2015. Mail delivery of the Petition for Review was not even postmarked until Thursday, April 16, 2015, and the earliest “received stamp” by an official organ of the Department (i.e., the Division of Securities) indicates the Department’s receipt (or first official recognition of having received) the mailed version of the Petition for Review was on Monday, April 20, 2015.

3.2 It is the policy of the Director to consider a Petition for Review to be timely filed *by mail* with the Director (as presiding officer) *if it has been timely received by the Department*. Based upon the postmark date of Thursday, April 16, 2015, the earliest date for that could have been Friday, April 17, 2015, and more likely Monday, April 20, 2015, when the Department would have for the first time accessed from its Post Office Box the mail it physically received during the intervening weekend of April 18-19, 2015.

3.3 If, however, we accept that all the proper regulatory procedures for filing by Fax transmission occurred, then the earliest that a “filing by Fax transmission” took place was *just before close of business* on April 15, 2015.

3.4 Right below the signature of ALJ Pierce, on Page 20 of the Initial Order, is a Notice of Appeal Rights setting forth the proper timing, procedure and statutory and regulatory requirements for the filing of a Petition for Review, which reads in relevant part as follows:

## “APPEAL RIGHTS”

“Under RCW 34.05.464 and WAC 10-08-211, any party to an adjudicative proceeding may file a petition for Review of this Initial Order. **Such a Petition for Review shall be filed with the Director of the Department of Financial Institutions within twenty (20) days of the date of service of the Initial Order.** The address for filing the Petition for Review is:

Director  
Department of Financial Institutions  
PO Box 41200  
Olympia, WA 98504-1200

Copies of the Petition for Review shall be served upon all other parties or their representatives at the time the Petition for Review is filed with the Director.”

[Original emphasis.]

3.5 As the Notice of Appeal Rights contained in the Initial Order indicates, the Washington Administrative Procedures Act<sup>1</sup> (hereinafter, “WAPA”) generally governs the adjudicative process applicable to this matter. WAPA empowered the Chief Administrative Law Judge of OAH to, in turn, adopt Model Rules of Procedure to which each state agency (including the Department) is obliged to adopt as much of as is reasonable under the circumstances; and if a state agency should differ from the Model Rules of Procedure in the adoption of its own agency-specific rules, it must make a finding stating the reason for variance.<sup>2</sup>

3.6 Consistent with WAPA, ALJ Pierce caused copies of the Initial Order to be served on each party and the Department, as evidenced by the Certificate of Service to the Initial Order signed and dated March 23, 2015.<sup>3</sup> WAPA specifically provides that “service” of an

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<sup>1</sup> Chapter 34.05 RCW.

<sup>2</sup> RCW 34.05.250.

<sup>3</sup> RCW 34.05.461(9).

administrative order – including ALJ Pierce’s Initial Order – occurs at the time of “posting in the United States mail, properly addressed, [and] postage prepaid.”<sup>4</sup> With respect to service of an administrative order, this definition of “service” in WAPA is controlling as to all provisions of the Model Rules of Procedure.<sup>5</sup> Accordingly, March 23, 2015, was the date of “service” of the Initial Order.

3.7 The Model Rules of Procedure also provides that a—

“petition for review shall be filed with the agency head *within twenty days of the date of service of the initial order* unless a different place and time limit for filing the petition are specified in the initial order in its statement describing available procedures for administrative relief. Copies of the petition shall be served upon all other parties or their representatives at the time the petition is filed.”<sup>6</sup>

[Emphasis added.]

3.8 The “Twenty-Day Rule” set forth above is subject to an additional provision of the Model Rules of Procedure governing the computation of time, as follows:

“In computing any period of time prescribed or allowed by any applicable statute or rule, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday, or a legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday, nor a holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, and holidays shall be excluded in the computation.”<sup>7</sup>

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<sup>4</sup> RCW 34.05.010(19).

<sup>5</sup> Chapter 10-08 WAC. WAC 10-08-110 specifically deals with the filing and service of “papers” (pleadings, etc.) by the parties to an administrative action and not to the issuance and service of administrative orders.

<sup>6</sup> WAC 10-08-211.

<sup>7</sup> WAC 10-08-080.

3.9 For purposes of all filing procedures related to petitions for review, the Department has adopted the Model Rules of Procedure.<sup>8</sup>

3.10 The twentieth (20<sup>th</sup>) day after proper service by mail of the Initial Order fell on Sunday, April 12, 2015. So under the Model Rules of Procedure (adopted by the Department), Ms. Steen's last day for timely filing a Petition for Review on behalf of her clients, the Respondents, was Monday, April 13, 2015.

3.11 Under the Model Rules of Procedure, “[p]apers required to be filed with the agency shall be deemed filed upon *actual receipt during office hours* at any office of the [Department]. Papers required to be filed with the [Director] [are] deemed filed upon actual receipt *during office hours* at the office of the [Director].”<sup>9</sup> [Emphasis added.]

3.12 There is, of course, a rule for filing by Fax transmission, which Ms. Steen attempted to do— albeit, *untimely*. If attempting to timely file a Petition for Review by Fax transmission, the procedure is, as follows:

“(ii) Papers may be filed by fax with the presiding officer. Filing by fax is perfected when a complete legible copy of the papers is reproduced on the presiding officer's fax machine *during normal working hours*, excluding weekends and holidays. *If a transmission of papers commences after these office hours, the papers shall be deemed filed on the next succeeding business day.*

(iii) Any papers filed by fax with the presiding officer should be accompanied by a cover page or other form identifying the party making the transmission, listing the address, telephone, and fax number of the party, identifying the adjudicative proceeding to which the papers relate, and indicating the date of and the total number of pages included in the transmission.

(iv) Papers filed by fax should not exceed fifteen pages in length, exclusive of any cover page.

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<sup>8</sup> Department's Rules of Procedure, WAC 208-08-020(1).

<sup>9</sup> WAC 10-08-110(1)(a).

(v) The party attempting to file the papers by fax bears the risk that the papers will not be timely received or legibly printed, regardless of the cause. If the fax is not received in legible form, it will be considered as if it had never been sent.

(vi) *The original of any papers filed by fax should be mailed to the [Director] within twenty-four hours of the time that the fax was sent. The [Director] has discretion to require this.*<sup>10</sup>

[Emphasis added.]

3.13 Based upon the Record on Review, Ms. Steen did not file the Petition for Review on behalf of Respondents *until just before the end of business hours* on Wednesday, April 15, 2015. So Ms. Steen's filing by Fax transmission could not by rule be deemed to have occurred until Wednesday, April 15, 2016, which was *two days after* the last day for timely filing the Petition for Review by either mail or Fax transmission.<sup>11</sup>

3.14 The Director has been known on rare occasions to exercise his discretion to waive the Model Rules of Procedure with respect to the timeliness of filing a petition for review *if* there has been a strong showing of excusable neglect based upon exigent circumstances, or, short of that, there has been a good faith showing of extenuating circumstances by a respondent who is not represented by legal counsel. However, not only are Respondents represented by Washington State legal counsel; the Petition for Review contains no attempt to show any reason whatsoever for the untimely filing of the Petition for Review. Moreover, taking into consideration that the Notice of Appeal Rights is so prominently displayed in the Initial Order, the Director finds no basis has been presented by Ms. Steen upon which to entertain a waiver of the "Twenty-Day Rule" under the Model Rules of Procedure.<sup>12</sup>

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<sup>10</sup> WAC 10-08-110(1)(b).

<sup>11</sup> Additionally, Ms. Steen did not make a request to the Office of Director to file the Petition for Review by email transmission or make an attempt to file the Petition for Review by email. See WAC 10-08-110(1)(c).

<sup>12</sup> WAC 10-08-211.

3.15 Therefore, the Director is obliged to not consider the Respondents' Petition for Review.

3.16 The Director has made a review of the Statement of Charges in relation to the language of the Initial Order and finds (1) that the Statement of Charges sets forth claims upon which relief could be granted *as pleaded*, (2) that the Findings of Fact and Conclusions of Law are consistent with what the Division of Securities pleaded in the Statement of Charges, and (2) that the sanctions, fines and fees imposed are not in excess of the prayer for relief in the Statement of Charges.

3.17 On this basis, the Director concurs in the Division's Response to the Petition for Review and is strongly inclined to affirm the Initial Order of ALJ Pierce, subject to non-substantive modifications set forth in Section 4.0 below.

#### 4.0 CORRECTION OF ALJ PIERCE'S ENUMERATION OF FINDINGS OF FACT AND CONCLUSIONS OF LAW

ALJ Pierce incorrectly numbered her Findings of Fact, Conclusions of Law, and Initial Order. The Director hereby affirms some of the enumeration of the Initial Order, while making corrections to such enumeration in other portions of the Initial Order, as follows:

4.1 Issues Presented. The enumeration of the portion of the Initial Order with the heading "ISSUES PRESENTED" (at Page 1 of the Initial Order) is correct and retained.

4.2 Order Summary. The portion of the Initial Order with the heading "ORDER SUMMARY" (at Page 2 of the Initial Order) is changed from Part I to Part II, and the paragraphs enumerated therein as 1.1 through 1.5, inclusive, are re-enumerated sequentially as Paragraphs 2.1 through 2.5, inclusive.

4.3 Hearing. The portion of the Initial Order with the heading “HEARING” (at Pages 2-3 of the Initial Order) is changed from Part I to Part III, and the paragraphs enumerated therein (Paragraph 3.1 through 3.6, inclusive) are correct and retain the same enumeration.

4.4 Findings of Fact. The portion of the Initial Order with the heading “FINDINGS OF FACT” (at Pages 3-11, inclusive, of the Initial Order) is changed from Part III to Part IV, while the paragraphs enumerated therein (Paragraphs 4.1 through 4.47, inclusive) are correct and retain the same enumeration.

4.5 Conclusions of Law. The portion of the Initial Order with the heading “CONCLUSIONS OF LAW” (at Pages 11-19, inclusive, of the Initial Order) is changed, as follows:

4.5.1 The enumeration of the heading is changed from Part IV to Part V;

4.5.2 The paragraphs enumerated sequentially therein as Paragraphs 5.1 through 5.36, inclusive (at Pages 11-18), are correct and retain the same enumeration; and

4.5.3 The paragraphs enumerated sequentially therein as Paragraphs 5.19 through 5.23 inclusive (at Pages 18-19), are re-enumerated sequentially as Paragraphs 5.37 through 5.41, inclusive.

4.6 Initial Order. The portion of the Initial Order with the heading “INITIAL ORDER” (at Pages 19-20, inclusive, of the Initial Order) is changed from Part V to Part VI, and the paragraphs enumerated therein as 5.1 through 5.5, inclusive, are re-enumerated sequentially as Paragraphs 6.1 through 6.5, inclusive.

None of the re-enumerations made above operates to substantively alter the Initial Order.

## 5.0 FINDINGS OF FACT AND CONCLUSIONS OF LAW

5.1 Findings of Fact. By way of Findings of Fact, the Director adopts all the findings of fact in the Director's Considerations in Section 3.0 above, and hereby affirms and incorporates by reference herein the Findings of Fact of the Initial Order as enumerated in Section 4.4 above.

5.2 Conclusions of Law. By way of Conclusions of Law, the Director adopts all conclusions of law in the Director's Considerations in Section 3.0 above, and hereby affirms and incorporates by reference herein the Conclusions of Law of the Initial Order as enumerated in Section 4.5 above.

5.3 Other Findings of Fact and Conclusions of Law of Initial Order. By way of further Findings of Fact and Conclusions of Law, the Director adopts all statements constituting findings of fact and conclusions of law of the Initial Order as enumerated in Sections 4.2, 4.3 and 4.6 of the Initial Order.

## 6.0 FINAL DECISION AND ORDER

Based upon the Findings of Fact and Conclusions of Law set forth above in Sections 5.1 through 5.3 of this Final Decision and Order, NOW, THEREFORE, IT IS HEREBY ORDERED:

6.1 Denial of Petition for Review. The Petition for Review of Respondents, RUNAWAY HEARTS PRODUCTIONS, LLC, CANYON SANDS PRODUCTIONS, INC., and SCOTT SANDSBERRY, is denied.

6.2 Cease and Desist Order. Respondents, RUNAWAY HEARTS PRODUCTIONS, LLC, CANYON SANDS PRODUCTIONS, INC., and SCOTT SANDSBERRY, shall cease and desist from any further violations of RCW 21.20.010, RCW 21.20.040, and RCW 21.20.140.

6.3 Imposition of Fine. Respondents, RUNAWAY HEARTS PRODUCTIONS, LLC, CANYON SANDS PRODUCTIONS, INC., and SCOTT SANDSBERRY, are jointly and severally liable for and shall pay to Washington State Department of Financial Institutions a fine of FIVE THOUSAND DOLLARS (\$5,000.00).

6.4 Imposition of Investigative Fees. Respondents, RUNAWAY HEARTS PRODUCTIONS, LLC, CANYON SANDS PRODUCTIONS, INC., and SCOTT SANDSBERRY, are jointly and severally liable for and shall pay to Washington State Department of Financial Institutions fees of THREE THOUSAND DOLLARS (\$ 3,000.00) for the investigation of violations of the Securities Act of Washington, chapter 21.20 RCW.

6.5 No Stay of Order. The Director has determined not to consider a Petition to Stay the effectiveness of this order. Any such requests should be made in connection with a Petition for Judicial Review made under chapter 34.05 RCW and RCW 34.05.550.

6.6 Judicial Review. Pursuant to RCW 34.05.542(2), Respondents RUNAWAY HEARTS PRODUCTIONS, LLC, CANYON SANDS PRODUCTIONS, INC., and SCOTT SANDSBERRY, have thirty (30) days after service of this Final Decision and Order, to file a Petition for Judicial Review to the Superior Court for the State of Washington, pursuant to the provisions of the Washington Administrative Procedures Act, chapter 34.05 RCW. For the requirements for filing a Petition for Judicial Review, see RCW 34.05.510 and sections following.

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6.7 Service of This Final Order. For purposes of RCW 34.05.542(2), Respondents RUNAWAY HEARTS PRODUCTIONS, LLC, CANYON SANDS PRODUCTIONS, INC., and SCOTT SANDBERRY filing a Petition for Judicial Review, service of this Final Order is effective upon deposit of it in the U.S. mail, declaration of service attached thereto.

Dated at Tumwater, Washington, on May 20, 2015.

WASHINGTON STATE DEPARTMENT  
OF FINANCIAL INSTITUTIONS

By:

A handwritten signature in black ink, appearing to read "Scott Jarvis", written over a horizontal line.

Scott Jarvis, Director