



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 Act¹ (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.²

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, 2015.³ WAPA specifically provides that “service” of an

¹ Chapter 34.05 RCW.

² RCW 34.05.250.

³ 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.”⁴ 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.⁵ 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.”⁶

[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.”⁷

⁴ RCW 34.05.010(19).

⁵ 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.

⁶ WAC 10-08-211.

⁷ 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.⁸

3.10 The twentieth (20th) 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].”⁹ [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.

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

⁹ 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.***¹⁰

[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.¹¹

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.¹²

¹⁰ WAC 10-08-110(1)(b).

¹¹ 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).

¹² 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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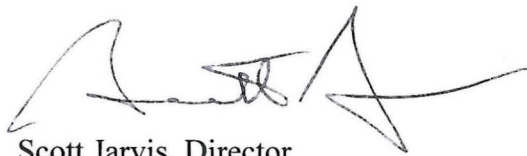
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6.7 Service of This Final Order. For purposes of RCW 34.05.542(2), Respondents RUNAWAY HEARTS PRODUCTIONS, LLC, CANYON SANDS PRODUCTIONS, INC., and SCOTT SANDBERRY filing a Petition for Judicial Review, service of this Final Order is effective upon 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:



Scott Jarvis, Director