

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

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

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

U.S. RECYCLING CORPORATION, METALS
RECYCLING DEPOT, INC., GREGORY G.
WHITE, JOHN H. MALMROSE, and TODD A.
SIMON,

Respondents.

SDO - 028 - 01

SUMMARY ORDER TO CEASE AND DESIST,
REVOKING EXEMPTIONS, AND NOTICE OF
INTENT TO IMPOSE FINES AND ORDER
AFFIRMATIVE RELIEF

Case No. 01 - 03 - 112

THE STATE OF WASHINGTON TO: U.S. Recycling Corporation
Metals Recycling Depot, Inc.
Gregory G. White
John H. Malmrose
Todd A. Simon

STATEMENT OF CHARGES

Please take notice that the Securities Administrator of the State of Washington has reason to believe that the Respondents, U.S. Recycling Corporation, Metals Recycling Depot, Inc., Gregory G. White, John H. Malmrose, and Todd A. Simon, have violated the Securities Act of Washington and that their violations justify the entry of an order of the Securities Administrator under RCW 21.20.390 to cease and desist from such violations. The Securities Administrator finds that delay in ordering the Respondents to cease and desist from such violations would be hazardous to the investors and to the public and that a Summary Order to Cease and Desist should be entered immediately. The Securities Administrator finds as follows:

SUMMARY ORDER TO CEASE AND
DESIST AND REVOKING EXEMPTIONS

1

DEPARTMENT OF FINANCIAL INSTITUTIONS
Securities Division
PO Box 9033
Olympia, WA 98507-9033
360-902-8760

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19

TENTATIVE FINDINGS OF FACT

I. RESPONDENTS

1. Respondent U.S. Recycling Corporation ("USRC") is a Delaware for-profit corporation authorized to do business in the year 1999. USRC is engaged in the business of metals recycling, and is a holding company for several related businesses, including Aluminum Recycling Corporation. Aluminum Recycling Corporation ("ARC") is USRC's principal operating subsidiary responsible for all of USRC's recycling operations. USRC maintains its principal place of business at 5005 West Laurel Street, Suite 212, Tampa, Florida.

2. Respondent Metals Recycling Depot, Inc. ("MRDI") is a Florida for-profit corporation authorized to do business in the year 2000. MRDI is engaged in the business of building and operating metal recycling buy-back centers in the Southeastern United States. MRDI is a wholly owned subsidiary of USRC, and maintains its principal place of business at 5005 West Laurel Street, Suite 212, Tampa, Florida.

3. Respondent Gregory G. White ("White") is the President and Chief Executive Officer of USRC, MRDI, and ARC. White resides in Boca Raton, Florida.

4. Respondent John H. Malmrose ("Malmrose") is the Secretary, Treasurer, and Chief Financial Officer of both USRC and MRDI. Malmrose has also been the Secretary and Treasurer of ARC.

5. Respondent Todd A. Simon ("Simon") is an Account Manager with MRDI.

II. NATURE OF RESPONDENTS' CONDUCT

6. On or about March 20, 2001, Simon made an unsolicited telephone call to a Washington resident (the "resident") on behalf of USRC and MRDI. Simon identified himself as a salesperson for USRC, and said that he was calling to solicit investors in MRDI. Simon asked about the Washington resident's net worth and yearly income, to which the resident provided the following information: net worth of \$600,000 and

1 yearly income of \$60,000 to \$70,000. Simon told the resident he was an "accredited investor" and
2 therefore qualified to invest in the offering.

3 7. The resident asked Simon for more information about the company. Simon stated that USRC was in
4 the metal recycling business, had been in business for more than six years, and has \$20 million in assets.
5 Simon stated that USRC had two subsidiaries, ARC and MRDI. ARC operates a "reverse vending"
6 business, where a person deposits empty aluminum cans in a machine and receives instant cash. MRDI
7 operates recycling buy-back centers, and was raising money to expand their operations.

8 8. Simon stated that MRDI was offering shares of stock through a "pre-IPO private placement." Simon
9 stated that if the resident purchased one "unit" of MRDI stock for \$10,000, the resident would receive
10 10,000 shares of preferred stock valued at \$1.00 per share. Simon stated that MRDI guaranteed a 12%
11 annual return from the preferred stock. This return would be paid quarterly. Simon stated that MRDI
12 was preparing to file papers with the Securities and Exchange Commission in order to make their initial
13 public offering in December 2001. Simon stated that MRDI expected the initial share price to be
14 between \$3.00 and \$5.00 and that MRDI would guarantee an initial share price of \$3.00.
15

16 9. Simon stated that when the share price reached \$5.00, the resident could convert his preferred stock
17 to common stock and the shares would be worth \$50,000. He also stated that if the resident elected to
18 keep the preferred stock, MRDI would continue to make the guaranteed quarterly interest payments of
19 12%. Simon stated that the resident had to invest before March 31, 2001, as MRDI only had one year to
20 sell its pre-IPO stock, and the one-year period ended on that date.

21 10. The resident asked for written information and Simon agreed to send him a prospectus. On or about
22 April 5, 2001, the Washington resident received a U.S. Postal Service Priority Mail envelope. The
23

1 envelope had been mailed from Tampa, Florida on March 29, 2001, and carried a return address of Metal
2 Recycling Depot, 5005 West Laurel Street, Suite 212, Tampa, Florida 33607-3836.

3 11. Inside the envelope were five documents: an 11-page document titled "Metals Recycling Depot,
4 Inc. Private Placement Memorandum" dated January 9, 2001 ("memorandum"); a 4-page document titled
5 "Subscription Agreement & Instructions" ("subscription agreement"); a 6-page glossy brochure from
6 USRC describing the vision, policies, and subsidiaries of USRC ("brochure"); information from First
7 Trust Corporation on IRA transfers; and a one-page reference letter from Bank of America ("BOA")
8 dated September 5, 2000 describing USRC's banking relationship with BOA. A business card
9 identifying Todd A. Simon as an "Account Manager" with Metals Recycling Depot was also included.

10 12. The memorandum describes an offering of 5,000,000 shares of 12% cumulative preferred stock for
11 financing the establishment and expansion of a network of metal buy-back centers. Contrary to the
12 representations made by Simon concerning the forthcoming public offering, the memorandum contains
13 the following statements: "There will not at any time be any public market for the shares..." and, "It is
14 highly unlikely that such a public market will develop."
15

16 13. The memorandum states that the offering was being made subject to terms and conditions of
17 Regulation D of the Securities Act of 1933. However, neither USRC nor MRDI have filed the required
18 Form D with either the Securities and Exchange Commission or the Washington Securities Division.

19 14. The memorandum did not contain audited financial statements for MRDI or USRC. The financial
20 information provided, a pro forma statement of operations, did not contain information sufficient to allow
21 investors to reach reasonable conclusions regarding the viability of the offering.

22 15. The "Management" section of the offering materials fails to include sufficient information about the
23 employment history of each executive officer, or information regarding the success or failure of their past
24

1 business ventures. In addition, the section fails to disclose that on June 1, 1995, Respondent White,
2 doing business as El Dorado Investments, Inc. was ordered by the State of California to desist and refrain
3 from offering and/or selling unregistered securities; that on March 24, 1997, Respondent White (and
4 ARC) were ordered by the State of South Dakota to cease and desist the offer and/or sale of unregistered
5 securities; and that on February 17, 1998, Respondents White and Malmrose (and ARC) were ordered by
6 the State of Wisconsin to cease and desist offering and/or selling unregistered securities, and to cease and
7 desist from further violations of Wisconsin's anti-fraud statute.

8 16. A Securities Division investigation into the BOA reference letter revealed that BOA prepared the
9 letter at Respondent White's request. The letter, written for one-time use in a proposed business
10 transaction, stated that USRC started their banking relationship at BOA in 1997 and maintained account
11 balances "in the high six figures."

12 17. On or about March 2, 2001, BOA requested that USRC stop including the letter in USRC offering
13 documents. BOA asserted that the letter was being used improperly and was no longer accurate, as by
14 March 2001 USRC no longer maintained account balances "in the high six figures." USRC agreed to
15 stop using the letter.
16

17 18. Instead of discontinuing the use of the letter, USRC altered the letter. By replacing the BOA phone
18 numbers on the letter with a toll-free number issued to Respondent White, White effectively diverted
19 calls from BOA to USRC. USRC employees, posing as employees of BOA, answered calls made to the
20 toll-free number. When asked to confirm the accuracy of the BOA reference, USRC employees verified
21 the accuracy of the letter, falsely claiming that USRC continued to maintain "large accounts" with BOA.

22 19. Neither Respondent USRC nor Respondent MRDI is currently registered to offer or sell its
23 securities in the State of Washington, and neither firm has previously been so registered.
24

1 20. Neither Respondent USRC nor Respondent MRDI has a current Form D notification filing with the
2 Securities Administrator of the State of Washington, and neither firm has previously made such a filing.

3 21. Respondents White, Malmrose, and Simon are not currently registered as securities salespersons or
4 broker/dealers in the State of Washington, and none of them have previously been so registered.

5 22. The Securities Administrator finds that the continued offering of MRDI stock in the manner
6 described in Tentative Findings of Fact, Section II, paragraphs 6 through 21, and the continued
7 availability of exemptions to Respondents, presents a threat to the investing public.

8
9 Based upon the above Tentative Findings of Fact, the following Conclusions of Law are made:

10 **III. CONCLUSIONS OF LAW**

11 1. The offer and/or sale of stock in Metal Recycling Depot, Inc. by Respondents as set forth in the
12 above Tentative Findings of Fact, Section II, Paragraphs 6 through 15, constitutes the offer and/or sale of
13 a security as defined in RCW 21.20.005(10) and (12).

14 2. The offer and/or sale of said securities by Respondents was made in violation of RCW 21.20.140, the
15 securities registration provision of the Securities Act of Washington, because, as set forth in the above
16 Tentative Findings of Fact, Section II, Paragraphs 6 through 15, and 19 through 21, no registration,
17 notification of claim of exemption for such offer and/or sale, or notice filing of federal covered securities
18 was or is on file with the Administrator of Securities, State of Washington, and it appears that the
19 Respondents do not otherwise qualify for an exemption from registration.

20 3. Respondents White, Malmrose, and Simon have each violated RCW 21.20.040, the salesperson
21 registration provision of the Securities Act of Washington, because, as set forth in the above Tentative
22

1 Findings of Fact, Section II, Paragraphs 6 through 15, and 21, Respondents offered and/or sold said
2 securities while not registered as securities salespersons or broker/dealers in the state of Washington.

3 4. The offer and/or sale of said securities was made in violation of RCW 21.20.010, the anti-fraud
4 provision of the Securities Act of Washington, because, as set forth in the above Tentative Findings of
5 Fact, Section II, Paragraphs 6 though 18, Respondents engaged in a scheme or artifice to defraud, made
6 untrue statements of material fact which were made with no reasonable basis in fact, and omitted to state
7 material facts necessary in order to make the statements made, in light of the circumstances under which
8 they were made, not misleading.

9
10 The Securities Administrator finds that an emergency exists, that the continued violations of RCW
11 21.20.010, RCW 21.20.040, and RCW 21.20.140, and the continued availability of exemptions under
12 RCW 21.20.320(1), (9), (11), and (17), constitutes a threat to the investing public, and that a summary
13 order to cease and desist from those violations and the summary withdrawal of the availability of
14 exemptions available under RCW 21.20.320 is in the public interest and necessary for the protection of
15 the investing public.
16

17 **SUMMARY ORDER**

18
19 Based on the foregoing, NOW, THEREFORE, IT IS HEREBY SUMMARILY ORDERED that
20 Respondents U.S. Recycling Corporation, Metals Recycling Depot, Inc., Gregory G. White, John H.
21 Malmrose, and Todd A. Simon, their agents and employees, each cease and desist from offering and/or
22 selling securities in any manner in violation of RCW 21.20.140, the section of the Securities Act of
23 Washington requiring registration of securities.
24

25 SUMMARY ORDER TO CEASE AND
26 DESIST AND REVOKING EXEMPTIONS

1 It is further SUMMARILY ORDERED that Respondents, their agents and employees, each cease and
2 desist from violation of RCW 21.20.327, the section of the Securities Act of Washington requiring notice
3 filing of federal covered securities.

4 It is further SUMMARILY ORDERED that Respondents, their agents and employees, each cease and
5 desist from violation of RCW 21.20.040, the section of the Securities Act of Washington requiring
6 registration of persons acting as securities salespersons, broker-dealers, or investment advisers.

7 It is further SUMMARILY ORDERED that Respondents, their agents and employees, each cease and
8 desist from violation of RCW 21.20.010, the anti-fraud section of the Securities Act.

9 It is further SUMMARILY ORDERED that based upon the violations of RCW 21.20.010, all
10 exemptions available to Respondents under RCW 21.20.320(1), (9), (11), and (17) are hereby withdrawn.
11

12 **NOTICE OF INTENT TO IMPOSE FINES**

13 Pursuant to RCW 21.20.395, and based upon the above Tentative Findings of Fact and Conclusions of Law,
14 the Securities Administrator finds that Respondents have committed ten or more knowing or reckless
15 violations of the Securities Act such that the imposition of fines is required. Therefore, the Securities
16 Administrator intends to order that Respondents shall be jointly and severally liable for and pay a fine in the
17 amount of Five Thousand Dollars (\$5,000) per violation, for a total of Fifty Thousand Dollars (\$50,000).
18

19 **NOTICE OF INTENT TO ORDER AFFIRMATIVE RELIEF**

20 Pursuant to RCW 21.20.390, and based upon the above Tentative Findings of Fact and Conclusions of Law,
21 the Securities Administrator intends to order that Respondents shall be jointly and severally liable for and
22

