

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 8970 / September 30, 2008

SECURITIES EXCHANGE ACT OF 1934
Release No. 58688 / September 30, 2008

ADMINISTRATIVE PROCEEDING
File No. 3-13262

In the Matter of

MATT J. CUNNINGHAM,

Respondent.

**ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS,
PURSUANT TO SECTION 8A OF THE
SECURITIES ACT OF 1933 AND SECTIONS
15(b) AND 21C OF THE SECURITIES
EXCHANGE ACT OF 1934, MAKING
FINDINGS, AND IMPOSING REMEDIAL
SANCTIONS AND A CEASE-AND-DESIST
ORDER**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 (“Securities Act”) and Sections 15(b) and 21C of the Securities Exchange Act of 1934 (“Exchange Act”) against Matt J. Cunningham (“Cunningham” or “Respondent”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over him and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings, Pursuant to Section 8A of the Securities Act of 1933 and Sections 15(b) and 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order, as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

Respondent

1. Respondent Matt J. Cunningham, age 44, is a resident of Denver, Colorado. Respondent is not and never has been associated with a broker-dealer registered with the Commission.

Facts

2. In or about February 2007, through an Internet website and telephone solicitations, an operation called American Investors Network ("AIN") began soliciting investors to finance advertising for a variety of products it purportedly sold. In or about September 2007, AIN purportedly ceased soliciting investors, but Fairweather Management ("Fairweather") began soliciting investors' funds to continue the purported advertising program.

3. In July 2007, AIN hired Cunningham to join its sales staff and solicit prospective investors for its advertising program. Cunningham continued to solicit investments after the operation changed its name to Fairweather. Cunningham received transaction-based compensation in the form of a 10% commission based on the funds he raised for AIN and Fairweather. He received commissions totaling approximately \$8,600.00 for his sales of AIN and Fairweather interests.

4. Cunningham solicited prospective investors through telephone calls, emails, and postings on Internet message boards. Consistent with AIN's and Fairweather's other sales efforts, Cunningham told prospective investors that AIN and Fairweather sold a variety of products to consumers. He further represented that AIN and Fairweather would use investor funds to purchase advertising for these products, and then split the profits derived from resulting sales with investors. He told investors they would receive profits of approximately \$10,000 to \$20,000 per month based on a \$2,000 initial investment.

5. In September 2007, Cunningham set up bank accounts to process investment funds and related payments to investors. In exchange, Cunningham received a fee from AIN or Fairweather. From September to at least early November 2007, Cunningham assured AIN investors that Fairweather would operate in the same manner as the AIN program, and he instructed current and prospective investors to send funds to bank accounts, some of which he personally controlled. Although Cunningham knew that AIN and Fairweather investors had not received anticipated profit payments, he continued to tell investors that they would receive payments.

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

6. Cunningham received into bank accounts he controlled \$750,000.00 in investor funds and approximately \$17,000.00 in cash and checks from AIN and Fairweather. From these funds, he took approximately \$34,500.00 for his services in maintaining the accounts. The remainder of the funds he remitted to other investors at the discretion of AIN and Fairweather.

7. Contrary to Cunningham's representations, AIN and Fairweather did not use investor funds to pay for advertising expenses, did not have sales profits to distribute to investors, and misappropriated investor funds by using them to make payments to other investors, their principals, and salespersons. Cunningham knew or was reckless in not knowing that the representations he made about AIN and Fairweather's business, profits, and use of investor funds were false.

8. The interests Cunningham offered and sold in the AIN and Fairweather advertising programs were securities in the form of investment contracts. The offers and sales of these securities were not registered with the Commission, nor were they exempt from registration.

9. As a result of the conduct described above, Cunningham willfully violated Sections 5(a), 5(c), and 17(a) of the Securities Act and Sections 10(b) and 15(a) of the Exchange Act and Rule 10b-5 thereunder.

10. Respondent has submitted a sworn Statement of Financial Condition dated April 30, 2008 and other evidence and has asserted his inability to pay disgorgement plus prejudgment interest and a civil penalty.

IV.

In view of the foregoing, the Commission deems it appropriate, in the public interest and for the protection of investors, to impose the sanctions agreed to in Respondent Cunningham's Offer.

Accordingly, pursuant to Section 8A of the Securities Act and Sections 15(b) and 21C of the Exchange Act, it is hereby ORDERED that:

A. Respondent Cunningham cease and desist from committing or causing any violations and any future violations of Sections 5(a), 5(c), and 17(a) of the Securities Act and Sections 10(b) and 15(a) of the Exchange Act and Rule 10b-5 thereunder;

B. Respondent Cunningham be, and hereby is barred from association with any broker or dealer, with the right to reapply for association after five (5) years to the appropriate self-regulatory organization, or if there is none, to the Commission;

C. Any reapplication for association by the Respondent will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the

following: (a) any disgorgement ordered against the Respondent, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

D. IT IS FURTHER ORDERED THAT Respondent shall pay disgorgement of \$43,100.00 and prejudgment interest of \$2,227.75, but that payment of such amount is waived based upon Respondent's sworn representations in his Statement of Financial Condition dated April 30, 2008 and other documents submitted to the Commission. Also, based upon Respondent's sworn representations in his Statement of Financial Condition dated April 30, 2008 and other documents submitted to the Commission, the Commission is not imposing a penalty against Respondent.

E. The Division of Enforcement ("Division") may, at any time following the entry of this Order, petition the Commission to: (1) reopen this matter to consider whether Respondent provided accurate and complete financial information at the time such representations were made; (2) seek an order directing payment of disgorgement and pre-judgment interest; and (3) seek an order directing payment of the maximum civil penalty allowable under the law. No other issue shall be considered in connection with this petition other than whether the financial information provided by Respondent was fraudulent, misleading, inaccurate, or incomplete in any material respect. Respondent may not, by way of defense to any such petition: (1) contest the findings in this Order; (2) assert that payment of disgorgement and interest or a penalty should not be ordered; (3) contest the amount of disgorgement and interest to be ordered; (4) contest the imposition of the maximum penalty allowable under the law; or (5) assert any defense to liability or remedy, including, but not limited to, any statute of limitations defense.

By the Commission.

Florence E. Harmon
Acting Secretary