BEFORE THE COMMISSIONER
OF THE TENNESSEE
DEPARTMENT OF COMMERCE AND INSURANCE

TENNESSEE DEPARTMENT OF COMMERCE AND INSURANCE SECURITIES DIVISION, *Petitioner,*	
v.	**DOCKET NO: 12.06-129948J**
CLIFTON ALEXANDER *and* HUGEROI.COM, *Respondents.*	

INITIAL ORDER

PERTAINING TO ALLEGATIONS AGAINST RESPONDENT CLIFTON ALEXANDER

This matter was heard on September 3, 2015, in Nashville, Tennessee before Administrative Judge Mary M. Collier, assigned by the Secretary of State, Administrative Procedures Division ("APD"), to sit for the Commissioner of the Tennessee Department of Commerce and Insurance ("Commissioner"). The September 3, 2015, hearing addressed the allegations contained in the NOTICE OF HEARING AND CHARGES pertaining to Respondent Clifton Alexander. Charles S. Herrell and Jesse D. Joseph, Assistants General Counsel, represented the Petitioner, the Tennessee Department of Commerce and Insurance Securities Division ("TSD"). Neither Respondent was present for the hearing, nor was an attorney or representative present on either Respondent's behalf.

On September 18, 2015, TSD filed a proposed INITIAL ORDER. On October 26, 2015, TSD filed the Transcript from the hearing. Neither Respondent has filed anything since the September 3, 2015, hearing. In addition, since September 3, 2015, TSD has not set a new

hearing date to address the allegations contained in the NOTICE OF HEARING AND CHARGES pertaining to Respondent HUGEROI.COM.

On January 7, 2016, TSD filed a MOTION TO DETERMINE STATUS. That motion is GRANTED to the extent that this INITIAL ORDER rules ONLY upon the allegations contained in the NOTICE OF HEARING AND CHARGES pertaining to Respondent Clifton Alexander. With regard to the allegations contained in the NOTICE OF HEARING AND CHARGES pertaining to Respondent HugeROI, Inc., a/k/a HUGEROI.COM (hereinafter HUGEROI.COM), until such time as TSD serves Respondent HUGEROI.COM with an AMENDED NOTICE OF HEARING AND CHARGES, setting a new hearing date, any and all claims against the Respondent HUGEROI.COM are HELD IN ABEYANCE. In the event that TSD has determined not to proceed with the allegations against Respondent HUGEROI.COM, a NOTICE OF VOLUNTARY NONSUIT shall be filed forthwith.

The subject of September 3, 2015, hearing was the allegations against Respondent Clifton Alexander contained in the NOTICE OF HEARING AND CHARGES filed on February 26, 2015. After consideration of the record in this matter, it is **ORDERED** that Respondent Clifton Alexander is hereby **PERMANENTLY BARRED** from participation in the Securities Industry in the State of Tennessee, that Respondent Clifton Alexander is assessed **CIVIL PENALTIES** in the total amount of twenty-thousand dollars ($20,000) for violations of TENN. CODE ANN. §§ 48-1-104, 48-1-109 and 48-1-121. This decision is based upon the following.

ENTRY OF DEFAULT

Pursuant to TENN. CODE ANN. § 4-5-307, on February 26, 2015, the Petitioner filed a NOTICE OF HEARING AND CHARGES. The Respondents failed to appear for the hearing. Based upon the Respondents' failure to appear for the hearing, the Petitioner moved for a default

pursuant to TENN. CODE ANN. § 4-5-309. The MOTION FOR DEFAULT was GRANTED with regard to Respondent Clifton Alexander and DENIED with regard to Respondent HUGEROI.COM.

In support of the motion for default, the Petitioner presented evidence demonstrating that the Respondent Clifton Alexander was personally served with notice of the hearing. Specifically, the Petitioner presented a packet of documents reflecting personal service on the Respondent Clifton Alexander of the following items by the Shelby County Sheriff's office:

1. a Letter from Assistant General Counsel Sarah Branch dated July 10, 2015, enumerating contents of document package and stating that the hearing is set for September 3, 2015, at 9:00 a.m.;

2. a copy of the NOTICE OF HEARING AND CHARGES filed on May 14, 2015;

3. a copy of the NOTICE OF WITNESSES AND EXHIBITS filed on May 14, 2015;

4. a copy of the NOTICE OF INTENT TO INTRODUCE AFFIDAVIT filed on May 14, 2015;

5. a copy of the MOTION TO CONTINUE HEARING filed on June 11, 2015;

6. a copy of the ORDER OF CONTINUANCE AND RESETTING entered on June 15, 2015; and

7. a copy of the ORDER entered on July 1, 2015.

These documents were personally served by the Shelby County Sheriff's office on Respondent Clifton Alexander on August 14, 2015. (HRG Ex. 2). Personal service upon Respondent Clifton Alexander was legally sufficient in accordance with TENN. CODE ANN. § 4-5-307 and TENN. R. & REGS. 1360–4–01–.06. It is determined that the Petitioner properly served the NOTICE OF HEARING AND CHARGES on the Respondent Clifton Alexander in compliance with RULE 1360–04–01–.06 of the Uniform Rules of Procedure for Hearing Contested Cases before State Administrative Agencies, TENN. COMP. R. & REGS. ch. 1360–4–01–.06 (June 2004 (Revised)).

The Respondent Clifton Alexander did not appear for the hearing. Pursuant to TENN. CODE ANN. § 4-5-309 and RULE 1360–04–01–.15, the Respondent Clifton Alexander was held in default for failure to appear at the hearing. Pursuant to RULE 1360–04–01–.15(2)(b), the hearing was held as an uncontested hearing.

Insufficient proof of service of the NOTICE OF HEARING AND CHARGES was presented by the Petitioner with regard to Respondent HUGEROI.COM to hold that entity in default. Accordingly, the MOTION FOR DEFAULT was DENIED with regard to Respondent HUGEROI.COM.

FINDINGS OF FACT

1. In email promotions for HUGEROI.COM, Respondent Clifton Alexander told potential investors that the private investment club HUGEROI.COM would connect members with stable and lucrative investment opportunities, promising that its proven investment opportunities had earned some members up to a 20% monthly return on their investment.

2. In 2007, Christopher Taylor, a resident of Duluth, Georgia, saw HUGEROI.COM's website and contacted HUGEROI.COM to obtain information regarding its investment opportunities. Shortly thereafter, on April 21, 2007, Mr. Taylor paid $149.95 and joined HUGEROI.COM as a lifetime member, which allowed him to access HUGEROI.COM's members only website.

3. In 2008, HUGEROI.COM recommended and promoted a new investment opportunity, offering interests in a private investment club for twenty thousand dollars ($20,000). In emails to Mr. Taylor, Respondent Clifton Alexander described the investment as an interest in an investment club that provided its members with a 20% return on investments each month.

Respondent Clifton Alexander said that investors could expect to receive approximately three thousand two hundred dollars ($3,200) per month as a return on their $20,000 investment.

4. Based on these recommendations and representations, Mr. Taylor invested in the private investment club by wiring twenty thousand dollars ($20,000) to HUGEROI.COM's bank account on April 28, 2008.

5. Mr. Taylor inquired about the status of his investment shortly following the wire transfer and, when he did not receive information, he demanded the return of his money.

6. Instead of investing Mr. Taylor's funds as Respondent Clifton Alexander represented, bank records indicate that Respondent Clifton Alexander used the funds to pay for his own personal expenses.

7. The HUGEROI.COM investments were not registered securities in Tennessee.

8. The Respondent Clifton Alexander sold a security in Tennessee to Mr. Taylor that was not registered with the TSD to be sold in Tennessee.

9. Respondent Clifton Alexander was not registered with the TSD to engage in the offering and selling of securities from or in Tennessee.

CONCLUSIONS OF LAW

1. In accordance with RULES 1360–04–01–.02(7) and 1360–04–01–.15(3), the Petitioner has proven by a preponderance of the evidence that the facts alleged in the NOTICE OF HEARING AND CHARGES pertaining to Respondent Clifton Alexander are true and that the issues raised therein should be resolved in its favor.

2. The Tennessee Supreme Court has held that "[t]he appropriate test for defining an 'investment contract' under Tennessee law is the *Hawaii Market* test . . .." *King v. Pope*, 91 S.W.3d 314, 322 (Tenn. 2002). Under this test, an investment contract is a security if the

investment contract meets the following requirements:

> (1) An offeree furnishes initial value to an offeror, and (2) a portion of this initial value is subjected to the risks of the enterprise, and (3) the furnishing of the initial value is induced by the offeror's promises or representations which give rise to a reasonable understanding that a valuable benefit of some kind, over and above the initial value, will accrue to the offeree as a result of the operation of the enterprise, and (4) the offeree does not receive the right to exercise practical and actual control over the managerial decisions of the enterprise.

Id. at 321 (quoting *State v. Hawaii Market*, 52 Haw. 642, 485 P.2d 105 (1971)).

3. In this case, Mr. Taylor, the offeree, relied on Respondent Clifton Alexander's recommendations and representations of substantial returns in deciding to invest twenty thousand dollars ($20,000) in HUGEROI.COM's private investment club. This initial value was subject to the risks of HUGEROI.COM's investment strategy, over which Mr. Taylor had no control. Therefore, the interest in the private investment club recommended, offered for sale, and sold by the Respondents was a security.

4. It is unlawful for any person to sell any security unless it is registered under the Act, the security or transaction is exempt under the Act, or the security is a covered security. TENN. CODE ANN. §§ 48-1-102(17)(A), 48-1-103 & 48-1-104(a).

5. TSD has shown by a preponderance of the evidence that the Respondent Clifton Alexander sold a security in Tennessee that was not registered with the TSD to be sold in Tennessee.

6. TENN. CODE ANN. § 48-1-104(b) provides:

> The commissioner may, after notice and opportunity for a hearing under the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, impose a civil penalty against any person found to be in violation of this section ... in an amount not to exceed ten thousand dollars ($10,000) per violation.

7. It is determined that the proof adduced at trial provides adequate grounds for the imposition of a civil penalty on Respondent Clifton Alexander in the amount of seven thousand five hundred dollars ($7,500) for the sale of the unregistered security to Mr. Taylor.

8. It is unlawful for any person to transact business from or in this state as a broker-dealer or agent unless such person is registered as a broker-dealer or agent under the Act. TENN. CODE ANN. § 48-1-109(a). In addition, it is unlawful for any person to transact business from or in this state as an investment adviser or investment adviser representative unless such person is registered as an investment adviser or investment adviser representative under the Act. TENN. CODE ANN. § 48-1-109(c).

9. TSD has shown by a preponderance of the evidence that Respondent Clifton Alexander recommended for sale, offered to sell, and sold a security in Tennessee without being registered under the Act to recommend, offer to sell, or to sell securities in Tennessee.

10. Respondent Clifton Alexander's offer to sell and sale of a security without being registered with the TSD to engage in the offering and selling of securities from or in Tennessee and the rendering of investment advisory services without being registered to provide such services from or in Tennessee provides adequate grounds for the imposition of a civil penalty on Respondent Clifton Alexander not to exceed ten thousand dollars ($10,000) per violation under TENN. CODE ANN. § 48-1-109(e). It is determined that the proof adduced at trial provides adequate grounds for the imposition of a civil penalty on Respondent Clifton Alexander in the amount of seven thousand five hundred dollars ($7,500) for not being registered to offer or sell securities at the time of the sale.

11. It is unlawful for any person, in connection with the offer or sale of any security

in Tennessee, to directly or indirectly:

> (1) Employ any device, scheme, or artifice to defraud;
> (2) Make any untrue statement of a material fact or 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) Engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

TENN. CODE ANN. § 48-1-121(a).

12. It is unlawful for any person who receives any consideration from another person primarily for advising the other person as to the value of securities or their purchase or sale in this state to:

> (1) Employ any device, scheme, or artifice to defraud the other person;
> (2) Engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon the other person; or
> (3) Take or have custody of any securities or funds of any client except as the commissioner may by rule permit or unless the person is licensed as a broker-dealer under this part.

TENN. CODE ANN. § 48-1-121(b).

13. TSD has shown by a preponderance of the evidence that Respondent Clifton Alexander fraudulently recommended for sale, offered to sell, and sold a security to an investor, promising him a twenty percent (20%) return on his investment. The Respondent Clifton Alexander fraudulently converted all or part of Mr. Taylor's investment funds to pay his own personal expenses.

14. TENN. CODE ANN. § 48-1-121(d) provides:

> The commissioner may, after notice and opportunity for a hearing under the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, impose a civil penalty against any person found to be in violation of this section ... in an amount not to exceed five thousand dollars ($5,000) per violation.

15. TSD has shown by a preponderance of the evidence that there are adequate grounds for the imposition of a civil penalty on Respondent Alexander not to exceed five thousand dollars ($5,000) per violation. TENN. CODE ANN. § 48-1-121(d). It is determined that the proof adduced at trial provides adequate grounds for the imposition of a civil penalty on Respondent Clifton Alexander in the amount of five thousand dollars ($5,000) for committing securities fraud.

IT IS THEREFORE ORDERED that:

1. The Respondent Clifton Alexander shall fully **COMPLY** with the Act, and all rules promulgated thereunder.

2. The Respondent Clifton Alexander shall **BE PERMANENTLY BARRED** from any conduct as a broker-dealer, agent of a broker-dealer, investment adviser, or investment adviser representative from or in the State of Tennessee.

3. The Respondent Clifton Alexander shall **BE PERMANENTLY BARRED** from conducting securities transactions on behalf of others from, in, or into the State of Tennessee.

4. All persons in any way assisting, aiding, or helping the Respondent Clifton Alexander in any of the aforementioned violations of the Act shall **CEASE AND DESIST** all such activities in violation of the Act.

5. The Respondent Clifton Alexander shall pay **CIVIL PENALTIES** as deemed warranted by the evidence as presented: seven thousand five hundred dollars ($7,500) for the sale of the unregistered security; seven thousand five hundred dollars ($7,500) for not being registered to offer or sell securities at the time of the sale; and five thousand dollars ($5,000) for committing securities fraud, for a total of civil penalties in the amount of twenty thousand dollars ($20,000) for conduct prohibited by TENN. CODE ANN. §§ 48-1-104, 48-1-109 & 48-1-121.

6. This INITIAL ORDER, imposing sanctions against Respondent Clifton Alexander, is entered to protect the public and investors in the State of Tennessee, consistent with the purposes fairly intended by the policy and provisions of the Act.

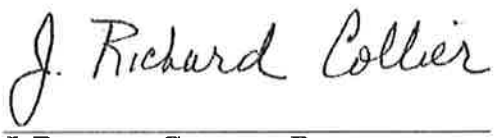
7. With regard to the allegations contained in the NOTICE OF HEARING AND CHARGES pertaining to Respondent HugeROI, Inc., a/k/a HUGEROI.COM, until such time as TSD serves Respondent HUGEROI.COM with an AMENDED NOTICE OF HEARING AND CHARGES, setting a new hearing date, any and all claims against the Respondent HUGEROI.COM are HELD IN ABEYANCE. In the event that TSD has determined not to proceed with the allegations against Respondent HUGEROI.COM, a NOTICE OF VOLUNTARY NONSUIT shall be filed forthwith.

It is so **ORDERED**.

This INITIAL ORDER entered and effective this the 31ST day of MARCH 2016.

MARY M. COLLIER
ADMINISTRATIVE JUDGE
ADMINISTRATIVE PROCEDURES DIVISION
OFFICE OF THE SECRETARY OF STATE

Filed in the Administrative Procedures Division, Office of the Secretary of State, this the 31ST day of MARCH 2016.



J. RICHARD COLLIER, DIRECTOR
ADMINISTRATIVE PROCEDURES DIVISION
OFFICE OF THE SECRETARY OF STATE