



3. Lesly Gatherright maintains an address at 1991 Prado, Memphis, Tennessee 38116, as well as 2601 W. Gentry, Tyler, Texas 75704.

4. Lesly Gatherright is currently offering and/ or selling securities from and/or in the State of Tennessee.

5. Gatherright approached Robert Buckingham, a citizen and resident of the State of Tennessee, in order to solicit him to invest in ABD and CaseBase. Gatherright represented to Buckingham that ABD and ABD CaseBase were formed to help people who have been impacted wrongly by insurance claims. ABD represented that ABD had the duty to step in and help these people. The investors provide support funds to base the expense while CaseBase mediates for settlement of insurance claims. CaseBase claims to not allow the insurance company to short change the claimant the total amount due.

6. The Respondents' investment solicitation letter states, "You win with ABD CaseBase because we will guarantee you a return of 16% annually of what you pay in at no risk to your investment."

7. Additional correspondence from the Respondents states, "When you help us by making funds available for us to work with then it is only right that we secure these funds and guarantee you a generous profit at no risk to you losing your money. Only ABD CaseBase is able and willing to do this."

8. ABD, Inc. is not currently, nor has the company ever been, registered with the Division pursuant to the Tennessee Securities Act of 1980, as amended. Moreover, ABD has never registered a securities offering with the Division.

9. CaseBase is not currently, nor has the company ever been, registered with the Division pursuant to the Tennessee Securities Act of 1980, as amended. Moreover, CaseBase has never registered a securities offering with the Division.

10. Lesly Gatherright is not currently, nor has he ever been, registered with the Division pursuant to the Tennessee Securities Act of 1980, as amended. Lesly Gatherright has never been registered with the Division as a broker-dealer, an agent of a broker-dealer or as an investment adviser.

11. The Respondents are presently and will continue to offer and/or sell unregistered securities, without the proper registration, from or in the State of Tennessee. As result of this activity the public will suffer immediate and irreparable injury, loss or damage.

12. The Respondents, in connection with the offer, sale and purchase of a security in this state, are engaged in acts, practices or courses of business which operate as a fraud or deceit upon citizens of the State of Tennessee. As result of this activity the public will suffer immediate and irreparable injury, loss or damage.

13. This Order is in the public interest and necessary for the protection of investors, and consistent with the purposes fairly intended by the Act.

#### **CONCLUSIONS OF LAW**

1. Tennessee Code Annotated §48-2-104 provides that it is unlawful for any person to sell any security in this state unless it is registered with the Division, qualified for an exemption pursuant to §48-2-103, or a covered security.

2. Tennessee Code Annotated § 48-2-102 provides that a security includes investment contracts. In *King v. Pope*, 91 S.W.3d 314, 320-322 (Tenn. 2002), the court held that an instrument or agreement would be considered an investment contract when (1) an offeree furnishes initial value to an offeror, (2) a portion of this initial value is subjected to the risks of the enterprise, (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. Investment contracts would include royalty agreements; thus, royalty agreements are a security.

3. Based upon the Findings of Fact and the Exhibits filed by the Petitioner, the Respondents have violated and are violating Tennessee Code Annotated §48-2-104 by offering and/or selling unregistered securities to Tennessee residents.

4. Tennessee Code Annotated §48-2-102(3) provides that a "broker-dealer" means any person engaged in the business of effecting transactions in securities for the account of others, or any person engaged in the business of buying or selling securities issued by one (1) or more other persons for such person's own account and as part of a regular business rather than in connection with such person's investment activities.

5. Tennessee Code Annotated §48-2-102(2) provides that an "agent" means any individual, other than a broker-dealer, who represents a broker-dealer in effecting or attempting to effect purchases or sales of securities from or in this state.

6. Tennessee Code Annotated §48-2-109(a) provides that 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 this part.

7. Tennessee Code Annotated §48-2-109(b) provides that it is unlawful for any broker-dealer to employ an agent to transact business as an agent unless the agent is registered under this part.

8. Based upon the Findings of Fact and the Exhibits filed by the Petitioner, Respondents, ABD and CaseBase, have violated and are violating Tennessee Code Annotated §48-2-109(a) and (b) by acting as unregistered broker-dealers and employing unregistered agents to solicit Tennessee residents.

9. Based upon the Findings of Fact and the Exhibits filed by the Petitioner, Respondent Lesly Gatherright has violated and is violating Tennessee Code Annotated §48-2-109(a) by acting as a broker-dealer and/or an unregistered agent of a broker-dealer from and in the State of Tennessee.

10. Tennessee Code Annotated § 48-2-121(a) provides that it is unlawful for any person, in connection with the offer, sale or purchase of any security in this state, directly or indirectly, to employ any device, scheme, or artifice to defraud, make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading, or engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person.

11. Based upon the Findings of Fact, the Respondents have violated and are violating Tennessee Code Annotated § 48-2-121(a) by telling investors in Tennessee that they are guaranteed a generous profit and a return of 16% on their investment.

12. Additionally, Respondents have violated and are violating Tennessee Code Annotated §48-2-121(a) by telling investors in Tennessee that there is no risk to their investments.

13. Tennessee Code Annotated §48-2-116 provides that the Commissioner may make, promulgate, amend, and rescind such Orders as are necessary to carry out the provisions of the Tennessee Securities Act of 1980, as amended, and that such Order is in the public interest, necessary for the protection of investors and consistent with the purposes fairly intended by the policy and provisions of the Act.

14. Tennessee Code Annotated §48-2-116(e)(2) states, in pertinent part, that no Order may be entered without: 1) prior notice to affected parties, unless the Commissioner determines that prior notice would not be in the public interest and would be detrimental to the protection of investors; 2) an opportunity for a hearing before the Commissioner; and 3) written Findings of Fact and Conclusions of Law.

15. Based upon the Findings of Fact, it would not be in the public interest and it would be detrimental to the protection of investors if prior notice of this Order were given to affected parties.

**NOW, THEREFORE**, in consideration of the foregoing, it is **ORDERED** that:

1. The Respondents ABD, Inc., ABD CaseBase, and Lesly Gatherright shall comply with the provisions of the Tennessee Securities Act of 1980, as amended.

2. The Respondents ABD, Inc., ABD CaseBase, and Lesly Gatherright shall cease and desist in the further conduct as a broker-dealer from or in the State of Tennessee until such time as it is effectively registered with the Division to engage in such activity.

3. The Respondent Lesly Gatherright shall cease and desist in further conduct as an agent of a broker-dealer from or in the State of Tennessee until such time he is effectively registered with the Division to engage in such activity.

4. All Respondents shall cease and desist the further offer and/or sale of unregistered securities from and in the State of Tennessee.

5. The Respondents shall cease and desist, from and in the State of Tennessee, in the present and future conduct of employing any device, scheme, or artifice to defraud, making any untrue statement of a material fact or omitting to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading, or engaging in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person.

6. All persons in any way assisting, aiding, or helping any of the aforementioned Respondents in any of the aforementioned violations of the Tennessee Securities Act of 1980, as amended, Tennessee Code Annotated §§48-2-101 et seq. shall cease and desist from all such activities in violation of the Tennessee Securities Act of 1980, as amended.

This Order is not intended to prohibit any lawful conduct in which any of the Respondents might be engaged.

Entry of this Order shall not in any way restrict the Tennessee Securities Division or the Commissioner of Commerce and Insurance from taking further action with respect to

these or other possible violations by Respondents of the Act or any of the Rules promulgated there under.

This Order shall become a Final Order 30 days from the date of its entry, unless written notification requesting a hearing is made within that 30 day period.

You are advised that you have the right to a hearing as to all matters raised in this Order. If you wish to exercise your right to a hearing, please notify:

**DAPHNE D. SMITH  
ASSISTANT COMMISSIONER FOR SECURITIES  
STATE OF TENNESSEE, DEPARTMENT OF COMMERCE AND INSURANCE  
DAVY CROCKETT TOWER, SUITE 680  
500 JAMES ROBERTSON PARKWAY  
NASHVILLE, TENNESSEE 37243**

Such request must be received within 30 days of the date of entry of this Order.

Entered this 20th day of August, 2003.

Paula A. Flowers  
Paula A. Flowers,  
Commissioner

**APPROVED FOR ENTRY:**

Daphne D. Smith by [Signature]  
Daphne D. Smith  
Assistant Commissioner for Securities  
Department of Commerce and Insurance

[Signature]  
Michele Komorowski Elliott, #022618  
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