

**BEFORE THE COMMISSIONER OF COMMERCE AND INSURANCE
FOR THE STATE OF TENNESSEE**

TENNESSEE SECURITIES DIVISION,)
 Petitioner)

vs.)

DAVID A. COSTELLO, JR.)
 Respondent.)

Order No. 08-000

CONSENT ORDER

The Tennessee Securities Division ("Division"), and David A. Costello, Jr., Respondent herein, agree to the entry of this Consent Order in accordance with Tenn. Code Ann. § 48-2-116 of the Tennessee Securities Act of 1980, as amended, Tenn. Code Ann. § 48-2-101, *et seq.* ("Act"), which states that the Commissioner of Commerce and Insurance ("Commissioner") from time to time may make such orders as are necessary to carry out the provisions of the Act.

GENERAL STIPULATIONS

1. It is expressly understood that this Consent Order is subject to the Commissioner's acceptance and has no force and effect until such acceptance is evidenced by the entry of the Commissioner.

2. This Consent Order is executed by the Respondent for the purpose of avoiding further administrative action with respect to this cause. Furthermore, should this Consent Order not be accepted by the Commissioner, it is agreed that presentation to and

consideration of this Consent Order by the Commissioner shall not unfairly or illegally prejudice the Commissioner from further participation or resolution of these proceedings.

3. Respondent fully understands that this Consent Order will in no way preclude additional proceedings by the Commissioner against the Respondent for acts or omissions not specifically addressed in this Consent Order for facts and/or omissions that do not arise from the facts or transactions herein addressed.

4. Respondent fully understands that this Consent Order will in no way preclude additional proceedings by any other state government representative against the Respondent for violations of law under other statutes, rules, or regulations of the State of Tennessee, which may arise out of the facts, acts, or omissions contained in the Findings of Fact and Conclusions of Law stated herein, or which may arise as a result of the execution of this Consent Order by the Respondent.

5. Respondent expressly waives all further procedural steps, and expressly waives all rights to seek judicial review of or to otherwise challenge or contest the validity of the Consent Order, the stipulations and imposition of discipline contained herein, and the consideration and entry of said Consent Order by the Commissioner.

FINDINGS OF FACT

1. The Tennessee Securities Act of 1980, as amended, Tenn. Code Ann. § 48-2-101, et seq. (the "Act"), places the responsibility for the administration of the Act on the Commissioner of Commerce and Insurance ("Commissioner"). The Division is the lawful agent through which the Commissioner discharges this responsibility. Tenn. Code Ann. § 48-2-115.

2. The Respondent (CRD# 109780) is a citizen and resident of Williamson County, Tennessee. Respondent's residential address is 182 Riverwood Drive, Franklin, TN 37069. He maintains his business address at 3322 West End Avenue, Suite 406, Nashville, TN 37203. Respondent is a registered investment advisor in the State of Tennessee, but is not registered as a broker-dealer or broker-dealer agent.

3. Bouldin Corporation is a Tennessee corporation formed on May 21, 1973, with a principal address of 195 Mt. View Industrial Drive, Morrison, TN 37357.

4. On August 17, 2006, the Division received a referral from the Alabama Securities Commission concerning Bouldin and Respondent. The Alabama Commission issued a Cease and Desist Order, asserting that Respondent had distributed Bouldin sales information to two Alabama residents; that this information resulted in stock purchases; and that Respondent was not a registered broker-dealer agent.

5. Bouldin filed a Regulation D 506 Offering with the Division in January 2006, but the stocks promoted by Respondent between March 2004 and October 2005 were not registered and did not qualify for an exemption.

6. In March 2004, Respondent began sharing information about Bouldin's investment potential with acquaintances and eventually the general public. Respondent began functioning as an intermediary between these potential investors and Bouldin.

7. Initially, Respondent had no intention of receiving compensation for these contacts. However, Bouldin began compensating Respondent with a five percent (5%) commission of each total investment.

8. Respondent furnished investors with information about Bouldin Corporation from

March 2004 to October 2005. On May 18, 2004, he received a payment for commissions in the amount of thirty thousand (\$30,000) dollars. On May 4, 2005, Respondent received a commission payment of twenty-eight thousand, five hundred (\$ 28,500) dollars. Finally, in August 2005, Respondent received compensation of one hundred, thirty-three thousand (133,000) shares of Bouldin stock which was valued at sixteen thousand, six-hundred, twenty-five (\$ 16,625) dollars.

9. The Division was able to identify thirty-two (32) discrete securities transactions which were effected by the Respondent on behalf of Bouldin.

10. The Division was able to identify twenty-six (26) separate investors who engaged in securities transactions through the Respondent. All twenty-six (26) investors were "accredited investors" as defined in Section 501 of Regulation D of the Securities Exchange Commission. An accredited investor is defined as an individual earning two hundred thousand (\$ 200,000) dollars annually; or having a household income of three hundred thousand (\$ 300,000) dollars annually, or having a net worth in excess of one million (\$ 1,000,000) dollars.

11. Although all investors were "accredited investors," the exemption afforded by Tenn. Code Ann. § 48-2-103(b)(14)(I) would be inapplicable to these sales because no notice of transaction, accompanied by a consent to service of process, a copy of the general announcement, if one were made regarding the proposed offering, and the nonrefundable filing fee of five hundred dollars (\$ 500) was filed with the commissioner.

CONCLUSIONS OF LAW

12. Pursuant to Tenn. Code Ann. §48-2-115(a), the responsibility for

administration of the Act is upon the Commissioner. The Division is the lawful agent through which the Commissioner discharges this responsibility.

13. Tennessee Code Annotated § 48-2-104(a) states that it is unlawful for any person to sell any security in this state unless: (1) it is registered under this part; (2) the security or transaction is exempted under § 48-2-103; or (3) the security is a covered security.

14. Tennessee Code Annotated § 48-2-109(a) states 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.

15. The averments in paragraphs one – eleven of the Findings of Fact constitute practices by Respondent which would provide grounds under Tenn. Code Ann. § 48-2-104 for the entry of an order of sanctions.

16. The averments in paragraphs one – eleven of the Findings of Fact constitute practices by Respondent which would provide grounds under Tenn. Code Ann. § 48-2-109(a) for the entry of an order of sanctions.

17. The Division received no consumer complaints arising from the Respondent's actions. The Division initiated its investigation as a result of a referral from the Alabama Securities Division. The Respondent was exceptionally cooperative throughout the investigation process. When his noncompliance with the Tennessee Securities Act was brought to his attention, he moved quickly to take appropriate remedial action.

ORDER

NOW, THEREFORE, on the basis of the foregoing, and Respondent's waiver of the right to a hearing and appeal under the Tennessee Securities Act and Tennessee's Uniform Administrative Procedures Act, Tenn. Code Ann. § 4-5-101 *et seq.*, and Respondent's admission of jurisdiction of the Commissioner, the Commissioner finds that Respondent, for the purpose of settling this matter, does not deny the matters herein, has agreed to the entry of this Order and that the following Order is appropriate, in the public interest and necessary for the protection of investors.

IT IS ORDERED, pursuant to Tennessee Code Annotated § 48-2-116(a) of the Tennessee Securities Act that:

1. Respondent **IS ORDERED TO AND AGREES** to refrain from effecting securities transactions into, within or from the State of Tennessee, until such time as he is properly registered as a broker-dealer, agent of a broker-dealer, investment adviser, or investment adviser representative in the State of Tennessee.
2. Respondent **IS ORDERED AND AGREES** that any security offered or sold by Respondent in the State of Tennessee shall be registered; exempted under Tenn. Code Ann. § 48-2-103; or be a covered security.
3. Respondent **IS ORDERED TO AND AGREES** to pay a civil penalty, in the amount of four thousand, eight hundred dollars (\$4,800.00) with payment due upon execution of this document, but in no event later than October 31, 2008. Payment in the form of a money order or cashier's check payable to the State of Tennessee Department of Commerce and Insurance shall be mailed or delivered to:

State of Tennessee
Department of Commerce and Insurance
Securities Division
Attention: Broker Dealer Section
500 James Robertson Parkway, Sixth Floor
Nashville, Tennessee 37243.

4. Respondent hereby **AGREES** that failure to comply with all the requirements and prohibitions contained in this Order shall result in further enforcement action by the Division, the Department of Commerce and Insurance, and/or the State of Tennessee in order to enforce the provisions contained herein.

IT IS ORDERED that this Order represents the complete and final resolution of, and discharge with respect to all administrative and civil, claims, demands, actions and causes of action by the Commissioner against Respondent for violations of the Act alleged by the Tennessee Securities Division to have occurred with respect to the facts contained herein.

This Consent Order is in the public interest and in the best interests of the parties, and represents a compromise and settlement of the controversy between the parties and is for settlement purposes only. By the signature affixed below, Respondent affirmatively states that he has freely agreed to the entry of this Consent Order, that he waives the right to a hearing on the matters underlying this Consent Order and to a review of the Findings of Fact and Conclusions of Law contained herein, and that no threats or promises of any kind have been made by the Commissioner, the Division, or any agent or representative thereof. The parties, by signing this Consent Order, affirmatively state their agreement to be bound by the terms of this Consent Order and aver that no promises or offers relating to

the circumstances described herein, other than the terms of settlement set forth in this Consent Order, are binding upon them.

ENTERED this 7th day of November, 2008.

Leslie A. Newman
Leslie A. Newman, Commissioner
Department of Commerce and Insurance

APPROVED FOR ENTRY:

[Signature]
David A. Costello, Jr.,
Respondent

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

[Signature]
C. Edward Scudder, Jr. (BPR# 017812)
Assistant General Counsel - Securities Division
Department of Commerce and Insurance
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