

**BEFORE THE COMMISSIONER OF COMMERCE AND INSURANCE  
OF THE STATE OF TENNESSEE AT NASHVILLE**

<b>TENNESSEE SECURITIES DIVISION,</b>	)	
<b>Petitioner</b>	)	
	)	<b>Order No. 05-007</b>
<b>vs.</b>	)	
	)	
<b>RUSSELL WALDRIP,</b>	)	
<b>Respondent</b>	)	

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**CONSENT ORDER**

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The Tennessee Securities Division ("Division") and Russell Waldrip, 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. The Respondent fully understands that this Consent Order will in no way preclude additional proceedings by the Commissioner for the Department of Commerce and Insurance or 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. Russell Waldrip ("Waldrip") is believed to be or to have acted as an employee, agent, officer, director, owner or other affiliated person of McCarn's Allstate Finance, Inc. ("MAF"). Waldrip maintains his address at 3328 Russell C.R. Rd., Rt. 2 Box 157, Russell Creek Rd., Lobelville, TN 37097. Waldrip has never been and is not currently registered with the Division in any capacity pursuant to the Act.

3. In May of 1998, Waldrip met with Jearline Walker ("Walker"), a Tennessee resident, concerning an investment opportunity in the McCarn's Allstate Finance, Inc. ("MAF") high-interest promissory note program. Walker's husband was the first cousin of Waldrip's wife.

4. Waldrip learned about the MAF program from Charles Bolton. The only documentation that Waldrip had regarding the investment was a brochure entitled "Your Partner in Money." The brochure was produced by MAF.

5. In meeting with Walker, Waldrip discussed and went over the MAF brochure "Your Partner in Money." Based on the information in Waldrip's possession, he advised Walker that the investment was guaranteed as the promissory notes were insured and secured by motor vehicle titles. Waldrip informed Walker that the investment was a safe investment.

6. Based on the information provided by Waldrip, Walker invested \$25,000.00 in a MAF high-interest promissory note.

7. Waldrip completed the Application Form, an Agreement of Understanding,

and the paperwork necessary for the investment. Waldrip was listed as the “investment counselor” on the paperwork. Waldrip forwarded by mail the documents and Walker’s check.

8. Waldrip received \$1,000.00 as commission related to the investment by Walker.

9. The MAF promissory notes are securities under the Act. At the time of the sale to Walker, the MAF promissory notes were not registered with the Division pursuant to the Act. At the time of the sale to Walker, Waldrip was not a registered agent or broker-dealer with the Division pursuant to the Act.

10. Waldrip did not inform Walker that the promissory note was a security under the Act, and as such, it was required to be registered with the Division.

11. Waldrip offered to sell and sold a MAF high-interest promissory note, which note was a security under the Act, at a time when Waldrip was not registered with the Division pursuant to the Act as a broker-dealer or agent of a broker-dealer. Waldrip offered to sell and sold a MAF high-interest promissory note, which note was a security required to be registered under the Act, at a time when the promissory note was not registered with the Division pursuant to the Act.

12. At the time of the sale to Walker, Waldrip held a Tennessee insurance license issued by the Department of Commerce and Insurance. Said license number is 824744. Waldrip no longer maintains an insurance license with the State of Tennessee. The license is currently canceled with the last expiration date being 03/03/2001.

## CONCLUSIONS OF LAW

13. 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.

14. Tennessee Code Annotated §48-2-104(a) provides that it is unlawful for any person to sell any security in this state unless (1) it is registered, (2) the security or transaction is exempted under Tenn. Code Ann. §48-2-103, or (3) the security is a covered security.

15. 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 or investment advisor unless such person is registered as a broker-dealer or agent or investment advisor under this part.

16. Tenn. Code Ann. § 48-2-121(a) states 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: (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 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.

17. The averments in paragraphs two - eleven of this Consent Order constitute practices by Russell Waldrip, which would provide grounds under Tenn. Code Ann. § 48-2-104 for the entry of an order of sanctions against Russell Waldrip.

18. The averments in paragraphs two - eleven of this Consent Order constitute practices by Russell Waldrip, which would provide grounds under Tenn. Code Ann. § 48-2-109(a) for the entry of an order of sanctions against Russell Waldrip.

19. The averments in paragraphs two - eleven of this Consent Order constitute practices by Russell Waldrip, which would provide grounds under Tenn. Code Ann. § 48-2-121 for the entry of an order of sanctions against Russell Waldrip.

20. Tenn. Code Ann. § 56-6-112(a)(8) states, in pertinent part, that the Commissioner may place on probation, suspend, revoke, or refuse to issue or renew any license under this part if she finds that one holding a license to sell insurance has used fraudulent, coercive, or dishonest practices, or demonstrated incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere.

21. Based upon the Findings of Fact cited above, the Commissioner concludes that the actions of the Respondent were in violation of Tenn. Code Ann. § 56-6-112(a)(8), and provide grounds for the imposition of sanctions set forth under such section.

### **ORDER**

**NOW, THEREFORE**, on the basis of the foregoing, and the Respondent's waiver of 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 the Respondent's admission of jurisdiction of the Commissioner, the Commissioner finds that Respondent, Russell Waldrip, for the purpose of settling this matter, admits 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 AND AGREES** to fully comply with the Tennessee Securities Act, as amended, and all rules promulgated thereunder.

2. Respondent **IS ORDERED AND AGREES** to permanently cease and desist in further conduct as a broker-dealer and/or agent of a broker-dealer from, into, or in the State of Tennessee.

3. Respondent **IS ORDERED AND AGREES** to permanently cease and desist offering to sell or selling securities from, into, or in the State of Tennessee.

4. Respondent **IS ORDERED AND AGREES** to permanently cease and desist from committing violations of the Tennessee Securities Act of 1980, as amended.

5. Respondent **IS ORDERED AND AGREES** that should any Respondent seek registration with the Division as a broker-dealer, agent of a broker-dealer, investment adviser, or agent of an investment adviser, such Respondent shall state on Form U-4 this action, pursuant to the instructions of said form and as required by the NASD, and file the appropriate Disclosure Reporting Page to disclose the details of this filed administrative action. Respondent **IS FURTHER ORDERED AND AGREES** that disclosure of the existence and terms of this Consent Order shall be disclosed in any offer to sell, private placement memoranda, or other sales tool which in any manner relates to the issuance, sale, or offer to sell a security.

6. Respondent **IS ORDERED AND AGREES** to pay five hundred dollars (\$500.00) to the State of Tennessee Investor Education Fund. Said sum shall be due and paid in full upon execution of this document, but in no event later than February 9, 2005. Payment in the form of a money order or cashier's check, made payable to the State of Tennessee Investor Education Fund, shall be mailed or delivered to:

State of Tennessee  
Department of Commerce and Insurance  
Securities Division  
Attention: Michele K. Elliott, Staff Attorney  
500 James Robertson Parkway, 5<sup>th</sup> Floor  
Nashville, Tennessee 37243.

7. Respondent is hereby **ORDERED TO DISGORGE** profits related to the sale to Jearline Walker in the amount of two thousand dollars (\$1,000.00). Said disgorged funds shall be paid to Jearline Walker as partial restitution. Said disgorged funds shall be due and paid in full upon execution of this document, but in no event later than February 9, 2005. Payment in the form of a money order or cashier's check shall be mailed or delivered to:

Jearline Walker  
1200 Sycamore Rd.  
Collierville, Tennessee 38017.

Proof of such payment shall be mailed or delivered within 10 days of payment to:

Securities Division  
Attention: Michele K. Elliott, Staff Attorney  
500 James Robertson Parkway, 5<sup>th</sup> Floor  
Nashville, Tennessee 37243.

8. Respondent **IS ORDERED AND AGREES** not to seek renewal of Insurance License #824744 or to apply for an insurance license through the State of Tennessee, Department of Commerce and Insurance.

9. Respondent hereby **AGREES AND ACKNOWLEDGES AND IT IS ORDERED** that failure to comply with all of the requirements and prohibitions contained in this Order shall result in the denial of any application by Respondent for any registration and/or licensure of any type, which registration and/or licensure is administered by the Division of Securities and/or the Department of Commerce and Insurance.

Execution of this Consent Order is due on or before February 9, 2005.

**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 Securities Division against Russell Waldrip for violations of the Tennessee Securities Act of 1980, as amended, alleged to have occurred with respect to facts contained herein. Nothing herein may be construed as preventing a separate division or section of the Department of Commerce and Insurance or a separate entity of the State of Tennessee from taking other appropriate action against the Respondent based on the Findings of Fact and Conclusions of Law enumerated herein or the existence of this executed Consent Order.

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, Russell Waldrip affirmatively states that he has freely agreed to the entry of this Consent Order, that he waives his 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 25<sup>th</sup> day of February, 2005.

Paula A. Flowers

Paula A. Flowers, Commissioner  
Department of Commerce and Insurance

**APPROVED FOR ENTRY:**

Russell Waldrip  
Russell Waldrip

Daphne D. Smith

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

Michele K. Elliott

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