

BEFORE THE COMMISSIONER OF THE TENNESSEE
DEPARTMENT OF COMMERCE AND INSURANCE

IN THE MATTER OF:

TENNESSEE SECURITIES DIVISION
Petitioner

DOCKET # 12.06-009967J

CAPITAL PLUS WORLDWIDE
FINANCIAL SERVICES, INC.
RICARDO ALKEALOHA GANT,
AND ANITA McNEIL GANT

NOTICE OF AN INITIAL ORDER BECOMING A FINAL ORDER

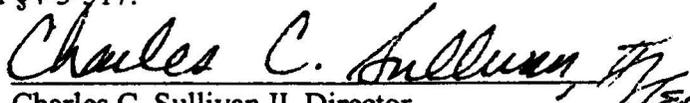
All parties are hereby notified that on May 8, 2001, the Initial Order entered in this matter became a Final Order pursuant to T.C.A. §4-5-318(f)(3), no party having filed a Petition for Appeal to the Agency pursuant to T.C.A. §4-5-315, within the fifteen (15) days permitted for such petitions, and the Agency having failed to issue a Notice of Intention to Review within the fifteen (15) days permitted under T.C.A. §4-5-315(b).

THE FINAL ORDER MAY BE REVIEWED IN THE FOLLOWING MANNER:

Within fifteen (15) days after the effective date of the Final Order, as listed above, any party may petition the Administrative Judge for reconsideration of the Final Order. If no action is taken within twenty (20) days of filing of the petition, it is deemed denied. See T.C.A. §4-5-317.

Any party may petition the Commissioner of the Department of Commerce and Insurance for a stay of the Final Order within seven (7) days after the effective date of the Order. See T.C.A. §4-5-316.

Any person aggrieved by this final decision may seek judicial review in a Chancery Court having jurisdiction within sixty (60) days after the date of the Final Order as listed above or, if a Petition for reconsideration of the Final Order is granted, within sixty (60) days of the entry date of the Final Order disposing of the petition. (However, the filing of a Petition for Reconsideration does not itself act to extend the sixty-day period, if the Petition is not granted.) A reviewing court may also order a stay of the Final Order upon appropriate terms. See T.C.A. §4-5-322 and §4-5-317.


Charles C. Sullivan II, Director
Administrative Procedures Division

If any party has knowledge of an Appeal of the Initial Order or a Notice of Intention to Review the Initial Order having been filed within the required fifteen (15) days, contrary to the above information, please notify this office, telephone (615) 741-7008 or 741-2078, and this Notice may be set aside.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of this document has been served upon counsel and all interested parties by delivering same to them at their address of record by placing a true and correct copy of same in the United States mail, postage prepaid.

This 4th day of May, 2001.


Administrative Procedures Division
Office of the Secretary of State

BEFORE THE COMMISSIONER OF THE TENNESSEE
DEPARTMENT OF COMMERCE AND INSURANCE

IN THE MATTER OF:

TENNESSEE SECURITIES DIVISION
Petitioner

DOCKET # 12.06-009967J

v.
CAPITAL PLUS WORLDWIDE
FINANCIAL SERVICES, INC.
RICARDO ALKEALOHA GANT,
AND ANITA McNEIL GANT

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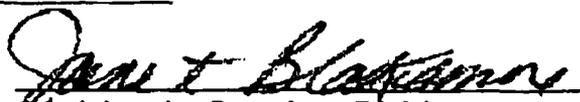

Charles C. Sullivan II, Director
Administrative Procedures Division

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This 4th day of May 2001.


Janet Blakemore
Administrative Procedures Division
Office of the Secretary of State



State of Tennessee
Department of State
Administrative Procedures Division
312 Eighth Avenue North
8th Floor, William R. Snodgrass Tower
Nashville, Tennessee 37243
Phone: (615) 741-7008 Fax: (615) 741-4472

April 23, 2001

Commissioner Anne Pope
Dept of Commerce and Insurance
500 James Robertson Parkway
Nashville, TN 37243-5065

Maliaka Bass EssameDin
Dept of Commerce and Insurance
312 8th Avenue, 25th Floor
W.R. Snodgrass Building
Nashville, TN 37243-0293

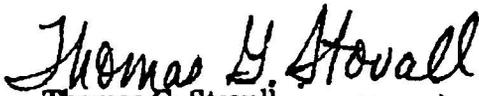
Terrance E. Tatum
Perkins, Wilson & Associates, P.A.
310 Mid Continent Plaza, Suite 110
West Memphis, Arkansas 72303

RE: In the Matter of: Capital Plus Docket No. 12.06-009967J

Dear Parties:

Please find enclosed a copy of an Initial Order rendered in connection with the above -styled case.

Sincerely yours,


Thomas G. Stovall
Administrative Judge *aeu*

Enclosure

/aeu

**BEFORE THE COMMISSIONER OF THE
TENNESSEE DEPARTMENT OF COMMERCE AND INSURANCE**

IN THE MATTER OF:)	
)	
TENNESSEE SECURITIES DIVISION)	DOCKET NO. 12.06-009967J
)	
)	
v.)	
)	
CAPITAL PLUS WORLDWIDE)	
FINANCIAL SERVICES, INC.)	
RICARDO ALKEALOHA GANT,)	
And ANITA McNEIL GANT)	
)	

ORDER

THIS ORDER IS AN INITIAL ORDER RENDERED BY AN ADMINISTRATIVE JUDGE WITH THE ADMINISTRATIVE PROCEDURES DIVISION.

THE INITIAL ORDER IS NOT A FINAL ORDER BUT SHALL BECOME A FINAL ORDER UNLESS:

1. PARTY FILES A WRITTEN APPEAL OR PETITION FOR RECONSIDERATION WITH THE ADMINISTRATIVE PROCEDURES DIVISION NO LATER THAN May 8, 2001.

OR

2. THE AGENCY FILES A WRITTEN NOTICE OF REVIEW WITH THE ADMINISTRATIVE PROCEDURES DIVISION NO LATER THAN May 8, 2001.

YOU MUST FILE THE APPEAL, PETITION FOR RECONSIDERATION OR NOTICE OF REVIEW WITH THE ADMINISTRATIVE PROCEDURES DIVISION. THE ADDRESS OF THE ADMINISTRATIVE PROCEDURES DIVISION IS:

SECRETARY OF STATE
ADMINISTRATIVE PROCEDURES DIVISION
312 EIGHTH AVENUE NORTH
8TH FLOOR, WILLIAM R. SNODGRASS TOWER
NASHVILLE, TN 37243

IF YOU HAVE ANY FURTHER QUESTIONS, PLEASE CALL THE ADMINISTRATIVE PROCEDURES DIVISION, 615/741-7008 OR 741-2078 OR FAX 741-4472. PLEASE CONSULT APPENDIX A AFFIXED TO THE INITIAL ORDER FOR NOTICE OF APPEAL PROCEDURES.

**BEFORE THE COMMISSIONER OF THE
TENNESSEE DEPARTMENT OF COMMERCE AND INSURANCE**

IN THE MATTER OF:

TENNESSEE SECURITIES DIVISION

v

**CAPITAL PLUS WORLDWIDE
FINANCIAL SERVICES INC.,
RICARDO ALKEALOHA GANT,
and ANITA McNEIL GANT**

Docket No. 12.06-009967J

ORDER

This matter came to be heard on January 16-18, 2001, before Thomas G. Stovall, Administrative Judge, assigned by the Secretary of State, and sitting for the Commissioner of the Tennessee Department of Commerce and Insurance in Nashville, Tennessee. Ms. Maliaka Bass EssamelDin, Staff Attorney for the Department and Commerce and Insurance, Securities Division, represented the State. The Respondents, Capital Plus Worldwide Financial Services, Inc. ("Capital Plus"), Ricardo Alkealoha Gant and Anita McNeil Gant, were present and represented by counsel, Mr. Terrance E. Tatum. This matter became ready for consideration upon receipt of the transcript on March 26, 2001

The subject of this hearing was the Petition to issue a Cease and Desist Order filed by the Securities Division ("Division") against the Respondents for alleged violations of the Tennessee Securities Act ("Act"). After consideration of the record in this matter, it is determined that the Respondents violated provisions of the Act, and they are hereby

ORDERED to CEASE and DESIST from any further activity in violation of the Act. This decision is based upon the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. To conduct securities transactions in Tennessee, a company must be registered with the Division as a broker-dealer. An individual must either be affiliated with a registered broker-dealer and be registered with the Division as an agent, or be personally registered as a broker-dealer. None of the Respondents, Capital Plus, Ricardo Gant, or Anita Gant, have ever registered with the Division as a broker-dealer or as an agent of a broker-dealer, nor have any of the Respondents registered any securities offerings with the Division.

2. Capital Plus is a Tennessee corporation. Ricardo and Anita Gant are husband and wife. He is the president, and she is an employee, of Capital Plus. Viscount, Suite #5, Memphis, Tennessee, is the principle place of business for Capital Plus as well as the business address of the Gants.

3. The Respondents solicited investors into a "high yield program" invested in overseas "bank debentures." The investor would enter into a contract whereby they agreed that their money would remain in the program for a minimum of fourteen months. Their rate of return would vary based upon the amount of their investment. The investor was to receive a check on a quarterly basis which reflected the amount of interest gained in their account. The principle investment was guaranteed, but the interest accrued was based upon the "best efforts" of the program. The investor

would execute a power of attorney document which appointed Ricardo Gant as attorney in fact. The investor would give a check to Ricardo Gant, who would forward the money to a "Guarantor," supposedly located in Atlanta, Georgia. The money was then pooled by the Guarantor with the money of other investors and invested in overseas bank debentures. Capital Plus was to make its money based upon payments from the Guarantor for client referrals. The Gants were paid a salary by Capital Plus.

4. Capital Plus solicited investors primarily in the African American community, specifically amongst church groups. Ricardo and Anita Gant are African American. Ricardo Gant had numerous independent contractors working for Capital Plus, who were also soliciting investors and being compensated based upon the amount of money they brought into the investment program. Most of these independent contractors were licensed insurance agents, as was Ricardo Gant. Ricardo and Anita Gant traveled extensively around the country putting on investment seminars. The targeted audiences were either church congregations or groups of pastors. The "sales pitch" given by Ricardo Gant was the need for the minority community to work together and pool their resources to create more wealth in the community.

5. The State offered numerous witnesses who were investors in the Capital Plus program. Their experiences were essentially the same. The following accounts are illustrative of the stories provided both by all the witnesses who testified, as well as individuals who were prepared to testify but were not called as witnesses at the hearing. All of these witnesses were African American.

Alice Wicks

Ms. Wicks is retired and lives in Albany, New York. She was invited to an investment seminar by Michael Johnson, who was working as an agent for Ricardo Gant and Capital Plus. The seminar was held on August 27, 1998, at a church in Albany. Gant and Harry Webster were co-presenters at the seminar. The attendees at the seminar were primarily professional and all were African American. Webster told the group that the purpose of the seminar was to solicit investors. On August 28, 1998, Ms. Wicks went to Gant's hotel suite where she signed a contract, or joint venture agreement, and invested \$2,000.00 in the program. It was her understanding that she would receive a return of six percent of her principle per month, payable on a quarterly basis. Ms. Wicks received a check for \$360.00 on December 2, 1998, which represented her quarterly proceeds. She never received another check, and has not had her principle returned. Beginning in March 1999, she began calling and writing letters to Gant. She received no response to these inquiries.

Elnora Orr

Ms. Orr is retired and living in Indianapolis, Indiana. She heard about the Capital Plus program by Dave Jones, her insurance agent. In October 1998, she and a small group of investors met Ricardo Gant at a hotel in Indianapolis. After the meeting, she and her husband invested \$50,000.00 in the program. It was her understanding that she would receive a monthly return of eight percent of her principle per month, payable on a quarterly basis. She received one check for \$8,000.00 on March 10, 1999. Despite

numerous inquiries to Ricardo Gant, Ms. Orr has received no other payments nor has her principle been returned.

Lori Robinson

Ms. Robinson is a receptionist at the Salem Missionary Baptist Church in Memphis, Tennessee. She was told about the Capital Plus program by a deacon in her church. In October 1998, she and her husband went to the Gants' office in Memphis, where they met with both Ricardo and Anita Gant. She was told by Ricardo Gant that while there could be no guarantee as to the amount of money she would make on her investment, her principle investment was absolutely guaranteed. Ms Robinson and her husband invested \$10,000.00. In February 1999, she received a check for \$2,500.00. She has received no other payments, nor has her principle been returned.

Robert Anderson

Mr. Anderson is retired and lives in Kinston, North Carolina. He was referred to the Capital Plus program by Pastor Keith Smith, who had a financial services business and was the representative of Capital Plus in the Kinston area. Mr. Anderson met with both of the Gants in Pastor Smith's office in Kinston, and invested \$10,000.00 in August 1998. He subsequently received two \$2,400.00 checks for a total of \$4,800.00. He received no more payments and has not had his principle returned.

Mr. Anderson began working for Pastor Smith and Capital Plus. He would go to churches to recruit pastors to attend seminars that were being conducted by Ricardo Gant

and Keith Smith. He videotaped some of these seminars. (One of the videotapes was shown at the hearing.)

Other investors who testified at the hearing were Rosalind Bowen, Henry Roberts, and Renee Wallace.

6. Beginning in the latter part of 1999, Ricardo Gant began efforts to contact the Guarantor, after receiving numerous inquiries from investors expressing concern over their lack of payments. Gant testified that he was instructed by the Guarantor to have the investors sign a Settlement Agreement and Release. After the investors signed the agreement, Gant was to forward it to the Guarantor who would then send the investors the money they were owed. Although some of the investors signed the Settlement Agreement and Release, none had their money returned.

7. Gant testified that as soon as he began to pose questions to the Guarantor as to why the investors were having trouble receiving their money, the Guarantor ended contact with him and would give him no more of the investors' money for distribution. Gant testified that at the time of his active involvement in the Capital Plus program, he believed it to be a legitimate enterprise. However, he now believes that the Capital Plus program probably was fraudulent from its inception. Gant testified that he has a great deal of remorse for his part in causing the investors to lose money by investing in the Capital Plus program.

CONCLUSIONS OF LAW

1 T.C.A. §48-2-109(a) provides: “[I]t 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.”

2 T.C.A. §48-2-104 makes it unlawful for any person to sell any security 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.

3. T.C.A. §48-2-102(12) expressly includes “investment contracts” in the definition of “security.”

4. The State has carried its burden of proof by a preponderance of the evidence that the Respondents, who were not registered with the Securities Division as broker-dealers or agents, were involved in the unlawful sale of unregistered securities.

5. In Security and Exchange Commission v. Lauer, 52 F. 3d 667, 670 (7th Cir. 1995), the court ruled:

[Investment contract] is a term of art in the securities laws. It means an interest that is not a conventional security like a bond or a share of common stock but that, having the essential properties of a conventional security--being an undivided, passive (that is, not managed by the investor) financial interest in a pool of assets--is treated as one for purposes of these laws.

6. In determining whether an instrument is an “investment contract”, and thus a “security” pursuant to §48-2-102(12), a test was set forth by the Tennessee Court of Criminal Appeals in Brewer v. State, 932 S.W.2d (Tenn. Cr. App. 1996). Pursuant to Brewer, an investment contract exists when:

(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.

7. The Tennessee Supreme Court in DeWees v. State, 390 S.W.2d 241 (Tenn. 1965), emphasized the “remedial purpose” of the Tennessee Securities Act to protect the public from “frauds and “impositions.”

8. The Capital Plus program meets the definition of an investment contract as defined by Brewer, and is thus subject to regulation under the Act. The investors furnished initial value (their investments) to the offeror, the Gants, on behalf of Capital Plus. The investments were subject to the risk of the enterprise, most specifically because the investors had no ability to know whether their money was actually to be used in the manner in which it was represented to them by the Gants. Indeed, it must be assumed that the money was not used as intended as the Gants have been unable to produce any evidence to support the argument that this program was anything other than a fraudulent scheme. The investments were induced by representations made by the Gants that the investors could expect a set monthly return on their investment, to be paid on a quarterly basis. Finally, the investors exercised no control over the managerial decisions of the enterprise.

9. The Respondents, who are not registered with the Division as broker-dealers or agents, were clearly involved in the sale of unregistered securities in violation of the Tennessee Securities Act. Therefore, it is hereby **ORDERED** that the Cease and

Desist Order entered by the Commissioner which ordered the Respondents to cease and desist all further violations of the Act is **UPHELD**.

This Initial Order entered and effective this 23rd day of April, 2001.

Thomas G. Stovall
Thomas G. Stovall
Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State, this 23rd day of April, 2001.

Charles C. Sullivan, II
Charles C. Sullivan, II, Director
Administrative Procedures Division *ccu*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of this document has been served upon counsel and all interested parties by delivering same to them at their address of record by placing a true and correct copy of same in the United States mail, postage prepaid.

This 23rd day of April, 2001.

Shirley E. Walls
Administrative Procedures Division
Office of the Secretary of State

APPENDIX A TO INITIAL ORDER
NOTICE OF APPEAL PROCEDURES

Review of Initial Order

This Initial Order shall become a Final Order (reviewable as set forth below) fifteen (15) days after the entry date of this Initial Order, unless either or both of the following actions are taken:

(1) Either party files a petition for appeal to the agency or the agency on its own motion gives written notice of its intention to review the Initial Order, within fifteen (15) days after the entry date of the Initial Order or as otherwise provided below. If either of these actions occur, there is no Final Order until review by the agency and entry of a new Final Order or adoption and entry of the Initial Order, in whole or in part, as the Final Order. A petition for appeal to the agency must be filed within the proper time period with the Administrative Procedures Division of the Office of the Secretary of State, 17th Floor, James K. Polk Building, Nashville, Tennessee, 37243-0307. (Telephone No. (615) 741-7008). See Tennessee Code Annotated, Section (T.C.A. §) 4-5-315, on review of initial orders by the agency.

(2) A party files a petition for reconsideration of this Initial Order, within fifteen (15) days after the entry date of the Initial Order. This petition must be filed with the Administrative Procedures Division at the above address. A petition for reconsideration is deemed denied if no action is taken within twenty (20) days of filing. A new fifteen (15) day period for the filing of an appeal to the agency (as set forth in paragraph (1) above) starts to run from the entry date of an order disposing of a petition for reconsideration, or from the twentieth day after filing of the petition, if no order is issued. See T.C.A. §4-5-317 on petitions for reconsideration.

A party may petition the agency for a stay of the Initial Order within seven (7) days after the entry date of the order. See T.C.A. §4-5-316.

Review of Final Order

Within ten (10) days after the Initial Order becomes a Final Order, or within ten (10) days after the entry date of a Final Order by the agency, a party may petition the agency for reconsideration of the Final Order. If no action is taken within twenty (20) days of filing of the petition, it is deemed denied. See T.C.A. §4-5-317 on petitions for reconsideration.

A party may petition the agency for a stay of the Final Order within seven (7) days after the entry date of the order. See T.C.A. §4-5-316.

A person who is aggrieved by a final decision in a contested case may seek judicial review of the Final Order by filing a petition for review in a Chancery Court having jurisdiction (generally, Davidson County Chancery Court) within sixty (60) days after the entry date of a Final Order or, if a petition for reconsideration is granted, within sixty (60) days of the entry date of the Final Order disposing of the petition. (However, the filing of a petition for reconsideration does not itself act to extend the sixty day period, if the petition is not granted.) A reviewing court also may order a stay of the Final Order upon appropriate terms. See T.C.A. § 5-322 and §4-5-317.