

**ADMINISTRATIVE PROCEEDING  
BEFORE THE  
SECURITIES COMMISSIONER OF MARYLAND**

**IN THE MATTER OF:**

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MARK A. FULLER

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CASE NO. 2008-0001

and

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WEALTH MANAGEMENT AND  
MARKETING LLC

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Respondents.

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**ORDER TO SHOW CAUSE**

WHEREAS, the Securities Division of the Office of the Attorney General (the "Securities Division") initiated an investigation into the activities of Mark A. Fuller and Wealth Management and Marketing LLC ("WMM") (collectively, "Respondents"); and

WHEREAS, the Maryland Securities Commissioner (the "Securities Commissioner") has found that grounds exist to allege that Respondents violated the Maryland Securities Act, contained at Md. Code Ann., Corps. and Ass'ns, §§11-101 *et seq.* (2007 Repl. Vol. & Supp. 2009) (the "Securities Act"), by engaging in acts or practices constituting violations of the Securities Act.

NOW, THEREFORE, pursuant to §11-701 of the Securities Act, pending a hearing in this matter or until such time as the Securities Commissioner modifies or rescinds this Order, it is

hereby:

**ORDERED**, that Respondents show cause why a final order should not be entered, ordering that Respondents be barred permanently from engaging in the securities and investment advisory business in Maryland, that a monetary penalty be entered against Respondents, and that Respondents cease and desist from further violation of §§11-301, 11-401 and 11-501 of the Securities Act.

The Securities Commissioner alleges the following as a basis for this Order:

**I.**

**JURISDICTION**

1. The Securities Commissioner has jurisdiction in this proceeding pursuant to §11-701 of the Securities Act.

**II.**

**RESPONDENTS**

2. Respondent Mark Fuller (“Fuller”) is a Maryland resident with a last known address located in Pikesville, MD.

3. Respondent owns WMM, a company located in Owings Mills, Maryland that specializes in mortgage refinance.

4. Respondents are not now nor have they ever been registered in Maryland as an issuer agent, broker-dealer or broker-dealer agent, or investment adviser or investment adviser representative.

### **III.**

#### **STATEMENT OF FACTS**

5. In 2006, through various real estate contacts, Respondents became aware of an investment opportunity relating to Smart Growth Opportunity Fund LLC (“Smart Growth”).

6. Smart Growth was formed more than ten years ago to pursue investment opportunities. Respondent Fuller was not involved in the formation of Smart Growth. Smart Growth became aware of an opportunity to purchase property located on Panola Road in DeKalb County, Georgia (the “Panola Road property”). Smart Growth’s principals believed that the Panola Road property was undervalued because it was not yet commercially zoned, but had the potential for commercial development. The idea was to have the property re-zoned to permit some form of commercial development.

7. Smart Growth sought investors in order to acquire and finance the Panola Road property. Respondent WMM, 100% owned and controlled by Respondent Fuller, was one such investor. Respondent WMM, through Respondent Fuller, entered into an agreement with Smart Growth whereby WMM was to receive 30% of the profits from the sale of the Panola Road property.

8. In 2006, Respondents obtained twelve investors, including WMM clients, to invest in WMM for the purpose of funding WMM’s investment in Smart Growth. Those investors included: J.F., who invested \$2,000 in March 2006; S.S., who invested \$12,500 in March 2006; K.O., who invested in May 2006 and August 2006, in the amounts of \$50,000 and

\$12,500, respectively; S.D. and S.D., who invested \$20,000 in May 2006; A.C., who invested \$5,000 in June 2006; B.L., who invested \$5,000 in June 2006; D.B., who invested \$10,000 in June 2006; W.H., who invested \$12,500 in July 2006; J.C., who invested \$27,500 in August 2006; L.T. and F.C.T., who invested \$12,500 in September 2006; and C.Y., who invested \$10,000 in June 2006 (collectively, the “WMM investors”).

9. Respondents did not produce information regarding C.Y.’s investments in response to a Securities Division subpoena for investor information, however, C.Y. later provided proof of his investment in the form of a signed investor agreement.

10. Each of the WMM investors received a WMM investment agreement drafted by Respondent Fuller, memorializing the investment. WMM investors were promised a return of principal as well as a percentage “of the [investment] group’s . . . share of the profits” from Smart Growth. The expected maturity date for the notes was 18 months and varied from late 2007 to early 2008, depending on the date of the investment.

11. The WMM investors were not given information that some investors received terms more or less favorable than others – that is some of the investment agreements referenced a greater percentage of profits than others and there were different percentages stated for the “investor groups . . . share of the profits.”

12. The investment agreements referred to prospective “profits” without advising of the possibility of losses. Furthermore the investment agreements suggested that the real estate associated with the investment would be sold for \$4.5 million without any explanation as to how that figure was arrived at or the likelihood of the sale of the real estate for that amount.

13. The WMM investors were not given any equity interest in property owned by

Smart Growth, although according to the WMM investment agreements their funds were to be used for the purpose of investing in Smart Growth's real estate.

14. Each WMM investment agreement contained a personal guarantee that "[i]f the Repayment Amount is not paid on the Repayment Date, the Investor shall have the option to make demand on Mark A. Fuller personally to pay the Repayment Amount plus any interest that has accrued, subject to the provisions of the Guaranty herein." Investors were not, however, provided with disclosures regarding Mr. Fuller's personal financial situation so as to evaluate the efficacy of the personal guarantee.

15. Respondents provided WMM investors with the development plans for the Panola Road property and minutes from the board sessions relating to the redevelopment, however, investors were not provided with disclosures relating to the risks of the investment. Nor were WMM investors advised that the investments constituted securities under Maryland law, and no attempts were made to determine whether any exemptions to either State or Federal registration were available.

16. Investors' monies, totaling approximately \$179,500, were deposited directly into WMM's business account, and monies were forwarded to Smart Growth on a periodic basis. Respondents did not perform any regular accounting of investors' monies, nor did Smart Growth provide Respondents with any regular accounting of investor monies.

17. WMM investors' monies were, per the investment agreements, to be invested 100% into the property purchased by Smart Growth. A balance sheet for Smart Growth, dated December 31, 2007, however, reflected that Respondent Fuller had an equity investment (and total investment amount) equal to only \$136,550 and loans against his equity equal to \$39,200.

18. Respondent Fuller's equity in Smart Growth was based upon investors' investment in WMM, and therefore, as investor monies were to be 100% invested in the Panola Road property, a shortfall in "equity" reflected that investor monies were not 100% invested in the Panola Road property as of that date.

19. Respondents did not contribute any money to the Smart Growth project. Respondents, however, were entitled to 30% of the profits from Smart Growth, and according to the WMM investment agreements, those profits were to be distributed to the WMM investors.

20. Although the Panola Road property was re-zoned to accommodate the planned redevelopment, the costs associated with the redevelopment made it difficult to pursue Smart Growth's intended plans on the time-frame referenced in the investment notes.

21. On information and belief, except for C.Y. who was paid \$2,000, the WMM investors have not received any payment of principal or interest in connection with the WMM investments, and the Panola Road property is in foreclosure.

22. The records of the Division reflect that there is no record of any securities registration, or claim of exemption or status as federal-covered securities issued under the name "Mark Fuller" or "Wealth Management and Marketing."

## **COUNT I**

### **(Offer and Sale of Unregistered Securities - Section 11-501)**

WHEREAS, §11-501 of the Securities Act makes it unlawful for any person to offer or sell a security in this State unless the security is registered, exempt from registration under Subtitle 6 of the Securities Act, or qualifies as a federal-covered security; and

WHEREAS, Respondents offered and sold securities investments to numerous investors in connection with the Panola Road property; and

WHEREAS, §11-101(r) of the Securities Act broadly defines the term “security” to include those investments listed at (1)(I) through (1)(xvi); and

WHEREAS, §11-101(r)(1)(vi) of the Securities Act defines evidence of indebtedness as a security; and

WHEREAS, §11-101(r)(1)(xi) of the Securities Act defines an investment contract as a security; and

WHEREAS, §11-101(r)(1)(xvi) defines a security as any “[c]ertificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase any of the preceding” definitions listed at §§11-101(r)(1)(I) through 11-101(r)(1)(xvi); and

WHEREAS, §11-101(r)(xvi) defines a security as any “[c]ertificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase any of the preceding”; and

WHEREAS, the investments described herein constitute evidence of indebtedness, investment contracts, or, in the alternative, another classification of security contained in §11-101(r) of the Securities Act; and

WHEREAS, Respondents’ guarantee of the described investments also constituted a security under §11-101(r)(xvi) of the Securities Act; and

WHEREAS, the securities offered and sold by Respondents were not registered with the Securities Division, nor was a claim of exemption from registration or a claim that the securities

are federal-covered securities filed with respect to the offerings; and

WHEREAS, Respondents have offered and sold securities in violation of the registration requirements of §11-501 of the Securities Act.

NOW, THEREFORE, IT IS HEREBY **ORDERED** that Respondents show cause why a final order should not be issued against them that orders Respondents to cease and desist from further violation of §11-501 of the Securities Act, assesses Respondents the statutory penalty of \$5,000 per violation of §11-501, permanently bars Respondents from the securities and investment advisory business in Maryland, and orders any other sanction or combination of sanctions against Respondents as permitted under §11-701.1.

## **COUNT II**

### **(Broker-Dealer/Agent Registration Violation, Section 11-401 (Respondent Fuller only))**

WHEREAS, §11-401 of the Securities Act makes it unlawful for any person to transact business in the offer and sale of securities in this State as an agent unless that person is registered as an agent; and

WHEREAS, the Securities Act defines “broker-dealer” to mean a person engaged in the business of effecting transactions in securities for the account of others or for his own account; and

WHEREAS, the Securities Act defines “agent” to mean an individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect the purchase or sale of securities; and

WHEREAS, Respondent Fuller transacted business as a broker-dealer or agent in this

State by effecting securities transactions while Respondent Fuller was not registered with the Securities Division as a broker-dealer or agent, in violation of §11-401 of the Securities Act.

NOW, THEREFORE, IT IS HEREBY **ORDERED** that Respondent Fuller show cause why a final order should not be issued against him that orders Respondent Fuller to cease and desist from further violation of §11-401's broker-dealer/agent registration provisions, assesses Respondent Fuller the statutory penalty of \$5,000 per violation of §11-401's broker-dealer/agent registration provisions, permanently bars Respondent Fuller from the securities and investment advisory business in Maryland and orders any other sanction or combination of sanctions against Respondent Fuller as permitted under §11-701.1.

### **COUNT III**

#### **(Fraud in Connection with the Offer or Sale of Securities, §11-301)**

WHEREAS, §11-301 of the Securities Act makes it unlawful for any person, in connection with the offer, sale or purchase of any security, 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 were made, not misleading; or
- (3) engage in any act, practice or course of business which operates or would operate as a fraud or deceit on any person; and

WHEREAS, Respondents employed a device, scheme or artifice to defraud by falsely suggesting to investors that they would profit from the WMM investments, that the Panola Road

property would sell for a specific price in the millions of dollars, and that investors would receive a return on their investments on or before a certain date; and

WHEREAS, Respondents failed to provide investors with material information including but not limited to Respondents' financial condition, the risks relating to the investments, the status of the investments as securities, the fact that some investors received terms more or less favorable than others, and the fact that Respondents were not registered to offer or sell securities; and

WHEREAS, Respondents falsely claimed in the WMM investment agreements that investors' monies would be used for the purpose of investing in the Panola Road property, when in fact the WMM investors were not given any equity interest in that property or any other piece of real estate; and

WHEREAS, Respondents falsely suggested to investors that their monies were to be invested 100% into the Panola Road property, however, a balance sheet for Smart Growth dated December 2007 reflected that Respondent Fuller's equity interest was less than the total of investor monies, and he had taken a loan against his "equity" interest; and

WHEREAS, Respondents did not engage in any accounting to investors with respect to their investments, notwithstanding that their monies were deposited directly into Respondent WMM's business bank account, commingled with other monies, and the monies were forwarded to Smart Growth on a periodic and sporadic basis; and

WHEREAS, by recommending the purchase of unregistered, non-exempt securities that are not federal-covered securities and by making misrepresentations and omissions of material fact in the course of those recommendations, Respondents engaged in activities that operated as a

fraud or deceit upon investors.

NOW, THEREFORE, IT IS HEREBY **ORDERED**, that Respondents show cause why a final order should not be issued against them that orders Respondents to cease and desist from engaging in the offer and sale of securities in violation of the antifraud provisions of §11-301 of the Securities Act, assesses Respondents the statutory penalty of \$5,000 per violation, permanently bars Respondents from engaging in the securities and investment advisory business in Maryland and orders any other sanction or combination of sanctions against Respondents as permitted under §11-701.1.

#### **REQUIREMENT OF ANSWER**

**IT IS FURTHER ORDERED**, pursuant to §11-701.1 of the Securities Act and COMAR 02.02.06.06, that Respondents shall file with the Securities Commissioner a written Answer to this Order To Show Cause *within 15 days of service of the Order*. The Answer shall admit or deny each factual allegation in the Order and shall set forth affirmative defenses, if any. A respondent without knowledge or information sufficient to form a belief as to the truth of an allegation shall so state.

The Answer also shall indicate whether Respondents request a hearing. A hearing will be scheduled in this matter if one is requested in writing. A respondent's failure to file a written request for a hearing in this matter shall be deemed a waiver by that respondent of the right to such a hearing. A respondent's failure to file an Answer or a request for a hearing shall result in entry of a final order granting the relief requested by the Securities Division.

**SO ORDERED:**

**Commissioner's Signature is  
on File with Original Document**

DATED: August 23, 2010

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Melanie Senter Lubin  
Securities Commissioner