

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

IN THE MATTER OF:

*

MARK A. FULLER

*

CASE NO. 2008-0001

and

*

WEALTH MANAGEMENT AND
MARKETING LLC

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*

Respondents.

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CONSENT ORDER

WHEREAS, the Securities Division of the Office of the Attorney General (the "Securities Division") initiated an investigation into the activities of Mark A. Fuller ("Fuller") and Wealth Management and Marketing LLC ("Wealth Management") (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. and 2010 Cum. Supp.) (the "Securities Act"), by engaging in acts or practices constituting violations of the Securities Act; and

WHEREAS, the Securities Commissioner on October 12, 2011, issued a Final Order in this matter, and Respondent Fuller petitioned the Circuit Court for Baltimore County for review of the Final Order; and

WHEREAS, before the holding of a hearing on Respondent Fuller's Petition for Review, and

without trial or final adjudication of any issue of fact or law, the Securities Commissioner having agreed to rescind the Final Order, and prior to the issuance of any other final order in this proceeding, the Securities Commissioner and Respondents have reached an agreement whereby Respondents, without admitting or denying the Statement of Facts and Findings of Fact and Conclusions of Law contained herein, except as expressly stated below, consent to the terms of this Order:

I.

JURISDICTION

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

II.

RESPONDENTS

Respondents admit the statements in Paragraphs 2 through 9 and Paragraph 11 below.

Respondents neither admit nor deny the statement in Paragraph 10 below:

2. Respondent Fuller is a Maryland resident with a last known address located in Pikesville, MD.

3. Respondent Wealth Management is a limited liability company formed in Maryland in September 2004. Wealth Management's principal place of business was located in Owings Mills, MD.

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

representative.

III.

STATEMENT OF FACTS

Respondents admit the statements contained in Paragraphs 5 through 9 below:

5. During the time relevant to the facts set forth in this Consent Order, Respondents were in the mortgage refinance business. 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 Wealth Management, 100% owned and controlled by Respondent Fuller, was one such investor. Respondent Wealth Management, through Respondent Fuller, entered into an agreement with Smart Growth whereby Wealth Management was to receive 30% of the profits from the sale of the Panola Road property.

The Wealth Management Investors

8. In 2006, Respondents obtained investors to invest in Wealth Management for the purpose of funding Wealth Management's investment in the Panola Road property, including the following: John D. Fuller, who invested \$2,000 in March 2006; Sophia Sterling, who invested \$12,500 in March 2006; Ken Ottley, who invested in May 2006 and August 2006, in the amounts of \$50,000 and \$12,500, respectively; Steven Dorsey and Stephen Dorsey, who invested \$20,000 in May 2006; Anthony Cook, who invested \$5,000 in June 2006; Bruce Lancaster, who invested \$5,000 in June 2006; Derek Brown, who invested \$10,000 in June 2006; Mr. & Mrs. Waeburn Hester, who invested \$12,500 in July 2006; Jeffrey Chinn, who invested \$27,500 in August 2006; and Leonides Tiglao and Fe Caridad R. Tiglao, who invested \$12,500 in September 2006 (collectively, the "Wealth Management investors").

9. The Securities Division has also received a Wealth Management investment agreement executed by Charles Yarbaugh in June 2006 and referencing the Panola Road Property. According to Respondents, Mr. Yarbaugh invested \$10,000 in Wealth Management in June 2006.

10. The investors referred to in Paragraphs 8 and 9 above are hereinafter referred to collectively as the "Wealth Management investors." Respondents do not admit that Mr. Yarbaugh's investment was intended for the Panola Road project notwithstanding that an agreement was signed to that effect.

11. Each of the Wealth Management investors received a Wealth Management investment agreement drafted by Respondent Fuller, describing the investment. The investment agreements promised a return of principal as well as a percentage "of the [investment] group's . . . share of the profits" from the Panola Road project. The expected maturity date for the agreements

was 18 months and varied from late 2007 to early 2008, depending on the date of the investment.

Respondents neither admit nor deny the statements in Paragraphs 12 and 13 below:

12. The Wealth Management investors were not given information that some investors' investment agreements referenced a greater percentage of profits than others and there were different percentages stated for the "investor groups . . . share of the profits."

13. 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.

Respondents admit the statements in Paragraphs 14 and 15 below:

14. The Wealth Management investors were not given any equity interest in property owned by Smart Growth, although according to the Wealth Management investment agreements their funds were to be used for the purpose of investing in the Panola Road property.

15. Each Wealth Management 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."

Respondents neither admit nor deny the statement in the following Paragraph 16:

16. Investors were not, however, provided with disclosures regarding Mr. Fuller's personal financial situation so as to evaluate the efficacy of the personal guarantee.

Respondents admit the statements in Paragraphs 17 through 21:

17. Respondents provided Wealth Management 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 Wealth Management investors advised that the investments constituted securities under Maryland law.

18. Investor monies were deposited directly into Wealth Management'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.

19. Wealth Management investors' monies were, per the investment agreements, to be parlayed 100% into the Panola Road property. Respondents did not contribute any of their own money directly to the Panola Road property. Smart Growth, in which Respondents had an interest, did contribute to the Panola Road property. Respondent Wealth Management was entitled to 30% of the profits from the Panola Road property, and those profits were to be distributed to the Wealth Management investors according to the Wealth Management investment agreements.

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

21. To date, except for Mr. Yarbaugh who was paid \$2,000, the Wealth Management investors have not received any payment of principal or interest in connection with the Wealth Management investments in the Panola Road property. The Panola Road property was sold at foreclosure in October 2009.

Other Investors, & Respondent's Conduct During The Securities Division's Investigation

Respondents neither admit nor deny the statements in Paragraphs 22 through 24:

22. In the course of the Securities Division's investigation into this matter, and in response to Subpoenas Duces Tecum issued by the Securities Commissioner, Respondents initially identified certain individuals as Wealth Managements investors and provided investment agreements as to those individuals. Respondents did not identify Mr. Yarbaugh, Doren Arthur or Kevin Arthur as investors.

23. The Securities Division's subpoenas broadly inquired into the identity of any persons who made investments through Respondents, or who were solicited to invest. In response to the Securities Division's subpoenas, Respondents did not provide information regarding any investors other than the Wealth Management investors (not including, however, Mr. Yarbaugh).

24. In early 2009, the Securities Division inquired with Respondents regarding the possibility that there were additional investors in Wealth Management. The Securities Division had evidence that Respondents had deposited checks into Wealth Management's checking account – referencing "investment" – and the drawers of the checks were persons not previously identified as investors.

Respondents admit the statements in Paragraphs 25 through 26:

25. In late January 2009, Respondents specifically advised the Securities Division that Kevin Arthur was not a Wealth Management investor and that three checks deposited into Wealth Management's checking account were received in purchase of one of Respondent Fuller's properties. The Securities Division learned, however, that at no time was that property deeded to Kevin Arthur.

26. Respondents further advised the Securities Division in late January 2009 that Mr.

Yarbaugh's funds were a "working capital loan" and that the funds were "unrelated to Panola Road."

Respondents neither admit nor deny the statements in Paragraphs 27 through 30:

27. In June 2009, Respondents responded to another inquiry from the Securities Division regarding the actual number of investors and provided the Securities Division with another list of investors, which did not include Mr. Yarbaugh, Doren Arthur, or Kevin Arthur. Furthermore, Respondents reiterated at that time that Mr. Yarbaugh was "not a party to this transaction [involving Panola Road]."

28. Later the Securities Division obtained information reflecting that Mr. Yarbaugh was in fact a Wealth Management investor, and that Doren Arthur and Kevin Arthur invested in Wealth Management. The investors provided copies of Wealth Management investment agreements, executed by Respondent Fuller. The investment agreements with the Arthurs each referred to a 40% rate of return. As to Kevin Arthur, the Securities Division was provided with a December 2006 letter signed by Respondent Fuller on Wealth Management letterhead stating that Mr. Arthur had \$100,000 "invested in Wealth Management Fund I" and that Mr. Arthur had "the ability to drawn down up to 50% of your invested capital prior to the maturity date."

29. The Securities Division also obtained from investors an advertisement used by Respondents to solicit investors in Wealth Management. The document, entitled "Investment Offer," advised that "Wealth Management . . . is making the following offer to qualified investors. Wealth Management will acquire a 12.5% share of a development project for \$125,000. Investor capital investment will be returned upon financing of the property. This should take place within 18 months. Upon the sale of the land the investor pool will receive 12.5% of the net profits from the sale" The document advertised the "[n]et profit" from the deal as \$2.3 million.

30. The Securities Division also was advised by investors that in some cases they were encouraged to use the proceeds of a refinance through Wealth Management to make the investment in Wealth Management.

The Offerings

Respondents admit the statement in Paragraph 31 below:

31. 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,” “Wealth Management & Marketing,” “Wealth Management Fund I,” or “Smart Growth.” The records of the Division further reflect that there is no record of any issuer agent registration for “Mark Fuller.”

Respondents neither admit nor deny the statement in Paragraph 32 below:

32. Required risk and conflict of interest disclosures were not made to investors regarding any of the securities investments offered and sold by Respondents as described herein.

IV.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

33. In connection with the facts described in the Statement Of Facts, incorporated herein by reference, and which, together with these Findings of Fact and Conclusions of Law, Respondents neither admit nor deny (except as to facts expressly admitted above), the Securities Commissioner finds and concludes that Respondents violated §§11-301(1), (2) and (3), 11-401 and 11-501 of the Maryland Securities Act with respect to the offer and sale of the investments referenced in the Statement of Facts herein.

V.

**CONSENT TO CEASE AND DESIST
AND OTHER RELIEF**

34. NOW, THEREFORE, IT IS HEREBY **ORDERED**, and Respondents expressly consent and agree that:

a. Respondents are assessed a \$50,000 fine, however, in light of the Affidavits Of Financial Condition And Other Information filed by Respondents with the Securities Division and dated December 12, 2010 (the “Financial Statements”), and Respondent Fuller’s recent bankruptcy filing in the United States Bankruptcy Court for the District of Maryland (Baltimore), Case No. 11-17727 JS, that fine shall be waived.

b. Should Respondents receive or become otherwise entitled to proceeds from the sale of the Panola Road Property, Respondents shall notify the Securities Division immediately, and, within 30 days of such receipt or entitlement, shall make *pro rata* payments to the Wealth Management investors referred to in Paragraph 8 of this Agreement, and to investor Charles Yarbaugh.

c. Should Respondents receive or become otherwise entitled to proceeds from the contingent claim referenced in Respondent Fuller’s bankruptcy filing as “possible claim from lawsuit gas leak in Pheonix, MD,” Respondents shall notify the Securities Division immediately and, within 30 days of such receipt or entitlement, shall make *pro rata* payments to the Wealth Management investors referred to in Paragraph 8 of this Agreement, and investors Charles Yarbaugh, Doren Arthur and Kevin Arthur, of such amounts as exceed compensation for past, present and future medical expenses relating to the claims in the lawsuit, but not to exceed the amounts that would be due to such investors under the respective investment agreements.

d. Respondents shall cease and desist from engaging in activities in violation of the Securities Act and related regulations.

e. Respondents are permanently barred from the securities and investment advisory business in Maryland.

f. Respondents shall in all future activities in Maryland comply with the Securities Act.

VI.

RELIANCE ON FINANCIAL REPRESENTATIONS

35. Respondents have provided to the Securities Commissioner, under penalty of perjury, a sworn statement of income, assets and liabilities as a condition of this Consent Order, and the Securities Commissioner has relied upon that Financial Statement in establishing the terms of and agreeing to enter into this Consent Order. If the Securities Commissioner receives information that the Financial Statement is false in any material respect, the Securities Commissioner may reopen these proceedings and seek such further relief as is appropriate, including the collection of the monetary penalty imposed above (but waived).

36. In the event that Respondents discover or become aware of, or if they acquire or recover, from any source, assets not now in their possession but attributable or accruing to or having been received from or belonging to any persons or entities investing in the Wealth Management notes referenced herein (including but not limited to assets from the sale of the Panola Road property), Respondents shall notify the Securities Commissioner within five business days of such discovery or acquisition of assets. When the Securities Commissioner receives such information from Respondents or from any other source, the Respondents shall, in a plan approved by the Securities Commissioner, distribute those assets pro rata to the Wealth Management investors in satisfaction of any indebtedness to those investors pursuant to the Wealth Management notes.

37. Nothing within this Consent Order shall be interpreted as interfering with or detracting from Respondents' obligations to the Wealth Management investors pursuant to the Wealth Management notes referenced herein, and/or the guarantees provided within those notes, and any private rights of action that those investors may have against Respondents in connection

with this matter.

VII.

SCOPE OF SETTLEMENT

38. This Consent Order relates only to the Securities Commissioner and Respondents in connection with the facts set forth. This Consent Order does not waive or relinquish the Securities Commissioner's right to take any action against any other persons, including but not limited to Smart Growth and other principals associated with Smart Growth. Nor does this Consent Order prevent the Securities Commissioner from bringing any action against Respondents relating to any acts or omissions not specifically raised in this Consent Order.

VIII.

JURISDICTION RETAINED

39. Jurisdiction shall be retained by the Securities Commissioner for such further orders and directions as may be necessary or appropriate for the construction or enforcement of the Consent Order.

40. If Respondents fail to comply with any term of this Consent Order or if it is determined that Respondents made any misrepresentation of a material fact upon which this Order is based, including with respect to the Financial Statements, the Securities Commissioner may institute administrative or judicial proceedings against Respondents to seek to enforce this Consent Order, to sanction Respondents for violating an Order of the Securities Commissioner or for making a misrepresentation of material fact upon which this Order was based, and may take

any other action authorized under the Securities Act or under any other applicable law, including the issuance of fines or penalties as provided by the Securities Act. In any such proceeding in which, after an opportunity for a hearing, the Securities Commissioner or the court finds that Respondents have violated this Consent Order or made any material misrepresentations in their dealings with the Securities Division, the Securities Division also may seek other sanctions for the violations that initiated this matter. For the purpose of determining those sanctions, the Statement of Facts and violations of the Securities Act set forth in this Consent Order shall be deemed admitted, and may be introduced into evidence against Respondents.

41. In the event that judicial intervention in this matter is sought by the Securities Commissioner or Respondents, subject matter jurisdiction will lie in the Circuit Court for Baltimore City pursuant to §11-702 of the Securities Act. Respondents agree that that Court will have personal jurisdiction over Respondents, and that venue will be properly in that Court.

42. The terms of this Consent Order may only be vacated or modified by a subsequent order issued by the Securities Commissioner.

DATE OF THIS ORDER:

May 11, 2011

CONSENTED TO:

_____, 2011

SO ORDERED:

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

Melanie Senter Lubin
Securities Commissioner

Mark Fuller, individually and on behalf of
Wealth Management and Marketing, LLC

On this _____ day of _____, 2011, personally appeared Mark Fuller,

individually and on behalf of Wealth Management and Marketing LLC, signer of the foregoing Consent Order, who did duly acknowledge his signature to be his free act and deed.

Notary Public

My Commission Expires: _____

Seal: