

BEFORE THE
STATE OF WISCONSIN
DEPARTMENT OF FINANCIAL INSTITUTIONS
DIVISION OF SECURITIES

In the Matter of
FOUNTAIN CAPITAL MANAGEMENT LLC,
DONALD R. ABERNATHY, DAVID A. FAZIO,
and RICHARD FANDRICH,

PETITION FOR ORDER

Respondents.

File No. S-03188(EX)

The staff of the State of Wisconsin Department of Financial Institutions, Division of Securities, Bureau of Registration & Enforcement has conducted an investigation in this matter pursuant to sec. 551.56, Wis. Stats., and as a result thereof alleges as follows:

1. Fountain Capital Management LLC ("Fountain") is a foreign business entity with a last known business address of 11424 N. 25th Ave., Phoenix, AZ 85029.
2. Donald R. Abernathy ("Abernathy") is an individual who at all times material hereto has been a principal and controlling person of Fountain, with a last known business address at that of Fountain.
3. David A. Fazio ("Fazio") is an individual who at all times material hereto has been a principal and controlling person of Fountain, with a last known business address of 3616 W. Cortez, Phoenix, AZ 85029.
4. Richard Fandrich ("Fandrich") is an individual who at all times material hereto has been a principal and controlling person of Fountain, with a last known business address at that of Fountain.
5. Integrated Cash Systems, Inc. f/k/a World Cash Providers ("Integrated") is a foreign business entity with a last known business address of 2300 Palm Beach Lakes Blvd., Ste. 305, West Palm Beach, FL 33407.
6. Douglas G. Cuthbert (DOB 7/15/62) ("Cuthbert") is an individual who at all times material hereto has been an owner and controlling person of Integrated, with a last known business address at that of Integrated and a last known residence address of 477 Mozart Rd., West Palm Beach, FL 33411.
7. Steven C. Sacco (DOB 7/22/57) ("Sacco") is an individual who at all times material hereto has been President of Integrated, with a last known business address at that of Integrated and a last known residence address of 555 S. Kirk Rd., Apt. 102, Palm Springs, FL 33415.
8. Kevin J. Falvey (DOB 7/31/64) ("Falvey") is an individual who at all times material hereto has been Vice President of Integrated, with a last known business address at that of Integrated and a last known residence address of 4104 41st Way., West Palm Beach, FL 33408.
9. During the year 2000, Abernathy, on behalf of Integrated, Cuthbert, Sacco, Falvey, Fountain, Fazio, Fandrich, and himself, offered and sold to at least one person in Wisconsin an investment in ATM machines to be leased back to, and managed and serviced by Integrated.

10. By contract the investors will play a passive role in the investment with no duties and responsibilities.
11. Since the investors will be involved in a common enterprise with the expectation of profits to be derived from the essential managerial efforts of others, the investments in ATM machines offered by the respondents are investment contracts as defined by section DFI-Sec. 1.02(6)(a), Wis. Adm. Code, and are therefore securities as defined by sec. 551.02(13), Wis. Stats.
12. The Integrated investment contracts have never been registered for offer and sale in Wisconsin pursuant to Ch. 551, Wis. Stats.
13. All Respondents have violated sec. 551.21(1), Wis. Stats., by offering unregistered securities in Wisconsin.
14. In connection with the offers of the securities described above, Fountain transacted business in Wisconsin as a "broker-dealer," as that term is defined by sec. 551.02(3), Wis. Stats.
15. At no time has Fountain been licensed as a securities broker-dealer pursuant to Ch. 551, Wis. Stats.
16. Fountain has violated sec. 551.31(1), Wis. Stats., by transacting business in Wisconsin as a broker-dealer without a license.
17. In connection with the offer and sale of the security described above, Abernathy transacted business in Wisconsin as an "agent" for Fountain, Fazio, Fandrich, and himself, as that term is defined by sec. 551.02(2), Wis. Stats.
18. At no time has Abernathy been licensed as a securities agent pursuant to Ch. 551, Wis. Stats.
19. Abernathy has violated sec. 551.31(1), Wis. Stats., by transacting business in Wisconsin as a securities agent without a license.
20. Fountain, Fazio, Fandrich, and Abernathy have violated sec. 551.31(2), Wis. Stats., by employing an unlicensed agent to represent them in Wisconsin.
21. On December 8, 1994, the State of Missouri issued an Administrative Order against Cuthbert, based on allegations of securities laws violations.
22. On June 21, 1996, Cuthbert was criminally convicted of wire fraud and mail fraud and was sentenced to 3 years probation and ordered to make restitution of \$385,576.80 to investors (United States v. James G. Freeman, et al., No. S1-44 CR 186 (JCK) (E.D. Mo. 1996).
23. On April 9, 1999, the U.S. Securities and Exchange Commission barred Cuthbert from association with any broker, dealer, investment company, investment adviser or municipal securities dealer.
24. On September 28, 1999, the State of Iowa issued an Administrative Order against Abernathy, based on allegations of securities laws violations, including fraud.
25. In connection with the offer and sale of the securities described in Paragraph 9, the Respondents omitted to disclose the criminal convictions and the issuance of the Administrative Orders referred to in Paragraphs 21 through 24.
26. The Respondents have violated sec. 551.41(2), Wis. Stats., by omitting to state a material fact necessary in order to make the statements made, in the light of the circumstances under which

they are made, not misleading, in connection with the offer and sale of securities to persons in Wisconsin.

- 27. On June 8, 2001, the Division of Securities issued a Summary Order of Prohibition and Revocation of Exemptions against Partners Investment Network, Inc., its successors, affiliates, controlling persons, officers, agents, servants, employees, and every entity and person directly or indirectly controlled or organized by or on its behalf.
- 28. Cuthbert was the owner of Partners Investment Network, Inc.
- 29. On September 26, 2001, the Division of Securities issued Consent Orders of Prohibition and Revocation of Exemptions against World Cash Providers, Inc. and World Cash Providers LLC, now known as Integrated, their successors, affiliates, controlling persons, officers, agents, servants, employees, and every entity and person directly or indirectly controlled or organized by or on its behalf.
- 30. Integrated is the successor to World Cash Providers, Inc.
- 31. On July 17, 2003, the Division of Securities issued Summary Orders of Prohibition and Revocation of Exemptions against Integrated, Cuthbert, Sacco, and Falvey, based on allegations of fraud in the offer and sale of unregistered securities and employing unlicensed agents in Wisconsin.

Therefore, the staff of the Bureau of Registration & Enforcement petitions the Administrator of the Division of Securities for the issuance of the attached Order pursuant to Ch. 551, Wis. Stats.

Susan A. Kittel Moore 10/27/03
 Susan A. Kittel Moore Date
 Legal Assistant
 Registration & Enforcement Bureau

David A. Cohen 11/5/03
 David A. Cohen Date
 Supervising Attorney
 Registration & Enforcement Bureau