

STATE OF ALABAMA
ALABAMA SECURITIES COMMISSION

IN THE MATTER OF:)
)
THE ABERNATHY TECHNOLOGY) ADMINISTRATIVE ORDER
RESEARCH INSTITUTE, INC.)
)

 RESPONDENT NO. CO-2001-0036

CONSENT ORDER

The Alabama Securities Commission ("Commission"), having the power to administer and provide for the enforcement of all provisions of Title 8, Chapter 6, Code of Alabama 1975, the Alabama Securities Act, upon due consideration of the subject matter hereof, and having confirmed information of the offers for sale and/or sale of securities into, within or from the state of Alabama, has determined as follows:

RESPONDENT

1. THE ABERNATHY TECHNOLOGY RESEARCH INSTITUTE, INC. ("RESPONDENT"), is represented to be a Delaware corporation, registered as a BD in the state of New York, et al, with a business address of Wall Street Tower, 20 Exchange Place, Suite 3800, New York, NY 10005.

STATEMENT OF FACTS

2. On March 19, 2001, RESPONDENT filed an application for registration with the Commission as a dealer in the state of Alabama. Included in the application was a statement that **"The Abernathy Technology Research Institute has not and will (not) transact any securities business until properly licensed."** On April 9, 2001, a letter was dispatched to RESPONDENT with advice that the application was deficient inasmuch as an attested balance sheet was not furnished. RESPONDENT was advised that failure to file a complete application may result in denial of the

application and that the notification constituted an Order of the Commission deferring the registration effective date until such time as all deficiencies were resolved and an Order of Registration issued. On May 4, 2001, the proper balance sheet was received by the Commission.

3. On April 9, 2001, a visitation letter was dispatched to RESPONDENT's clearing firm, Banc of America Securities ("Banc"), for all account information, including the names, addresses and phone numbers of Alabama clients of RESPONDENT, and documents, including transaction reports detailing transactions and date of transactions, if any.

4. On April 30, 2001, the Commission received transaction information from Banc reflecting RESPONDENT has 3 accounts opened with 2 Alabama residents, DAXTON GOFORTH, Tuscaloosa, AL/Birmingham, AL, account #746-70240 (**27 buys and 28 sales during the period 07/02/99 to 12/04/00**); Estate of JAMES R. OWEN, III, Gulf Shores, AL, account #746-60033 (no indication of transactions in Alabama), and Guarantee & Trust Company, FBO DAXTON GOFORTH, Birmingham, AL, account #746-90163 (no transactions).

5. Review of the files of the Commission, disclosed no record of registration or exemption from registration of RESPONDENT as a dealer or agent in the state of Alabama.

6. On June 1, 2001, a Cease and Desist Order was issued to RESPONDENT alleging that RESPONDENT violated Sections 8-6-3(a) and 8-6-3(j)(1), Code of Alabama 1975, by transacting securities activities in the state of Alabama while unregistered, and for filing an application for registration containing a false statement.

7. By letter, dated June 13, 2001, Edward F. Coyle, president of RESPONDENT, provided a response, a portion of which is set forth as follows:

"....It is correct that the firm never filed for registration in Alabama until recently. The accounts the firm maintained were James Owen, an employee of the firm who lived and worked in New York but maintained his home address on the account. Mr. Owen is now deceased and we maintain his estate account but do not transact business. We also maintain two accounts for Daxton Goforth, a retail account and an IRA account. Mr. Goforth is a school friend of Mr. Owen and we maintained a small trading account for him. We have not traded in the accounts since we realized we were not registered in Alabama. We have never solicited business in the State of Alabama and maintained these accounts for convenience. We mistakenly thought that the firm was registered in all states."

CONCLUSIONS OF LAW

8. RESPONDENT is not registered nor exempt from registration as a dealer or agent in the state of Alabama, and has effected securities transactions with a resident of the state of Alabama.

9. Transacting business in the state of Alabama as a dealer or agent, without benefit of registration or exemption from registration, is a violation of Section 8-6-3(a), Code of Alabama 1975.

10. RESPONDENT has filed an application for registration which, as of its effective date, or as of any date after filing, was incomplete or contained a false statement when advising the Commission that **"The Abernathy Technology Research Institute has not and will not transact any securities business until properly licensed."**

11. The filing of an application for registration, containing a false statement, is a violation of Section 8-6-3(j)(1), Code of Alabama 1975.

WHEREAS, RESPONDENT admits that securities transactions were effected in the state of Alabama prior to registration; provided the explanation reflected in paragraph 7, above, and states that the information and assertions presented to the Commission during its investigation of this matter are true and correct; that RESPONDENT understands the Commission relied upon such information and assertions in its determination to accept this Order and that should information or assertions prove to be incorrect or misrepresented, the Commission may seek such other administrative, civil or criminal remedies that may be available to it under the provisions of the Alabama Securities Act, and

WHEREAS, RESPONDENT has voluntarily waived all rights to a hearing upon entry of this Order and has consented to the entry of this Order, and

WHEREAS, the Commission finds this Order necessary and appropriate in the public interest for the protection of investors and is consistent with the purposes fairly intended by the policy and provisions of the Act, and

WHEREAS, the Commission and RESPONDENT are desirous of settling this matter as hereafter set forth and agree to the entry of this Order,

ACCORDINGLY, IT IS HEREBY ORDERED:

1. That RESPONDENT shall, until such time as properly registered in the state of Alabama, refrain from effecting securities transactions into, within or from the state of Alabama.

2. That RESPONDENT shall ensure that proper procedures are enacted to preclude any future non-compliance with the Act.

3. That in accordance with Section 8-6-19(j)(1), Code of Alabama 1975, RESPONDENT shall pay to the **state of Alabama** an administrative assessment in the sum of One Thousand Dollars (\$1,000), said funds to be tendered in certified funds contemporaneously with the entry of this Order.

4. That in accordance with Section 8-6-19(k)(1), Code of Alabama 1975, RESPONDENT shall pay to the **Alabama Securities Commission**, as partial reimbursement for the Commission's cost for investigating this matter, the sum of Five Hundred Dollars (\$500), said funds to be tendered in certified funds contemporaneously with the entry of this Order.

5. That the entry of this Consent Order resolves the Cease and Desist Order, Administrative Order No. CD-01-0036, issued June 1, 2001 to RESPONDENT.

AGREED AND CONSENTED to on date indicated:

RESPONDENT
THE ABERNATHY TECHNOLOGY
RESEARCH INSTITUTE, INC.

BY: [Signature]
TITLE: President
DATE: July 19, 2001

ORDERED AND APPROVED this 25th day of July, 2001



ALABAMA SECURITIES COMMISSION
770 Washington Avenue, Suite 570
Montgomery, AL 36130-4700
(334) 242-2984

BY: [Signature]
JOSEPH P. BORG
Director