

STATE OF ALABAMA
ALABAMA SECURITIES COMMISSION

IN THE MATTER OF:

DAVID A. COSTELLO, JR.)
)
 RESPONDENT)

ADMINISTRATIVE ORDER
NO. CO-2006-0026

CONSENT ORDER

The Alabama Securities Commission ("Commission"), having authority to administer and provide for the enforcement of all provisions of Title 8, Chapter 6, Code of Alabama 1975, the Alabama Securities Act ("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. DAVID A. COSTELLO, JR. ("Respondent") is registered in the State of Tennessee as an investment advisor representative with PFM Advisor, with a business address of 3322 West End Avenue, Suite 406, Nashville, Tennessee, 37203, and a residential address of 182 Riverwood Drive, Franklin, Tennessee, 37069.

STATEMENT OF FACTS

2. On January 4, 2006, Bouldin Corporation ("Bouldin"), a Tennessee issuer, submitted a notice filing pursuant to Rule 506, Regulation D to the Alabama Securities Commission in order to sell common and preferred shares and convertible debentures. On January 11, 2006, the Commission staff issued a deficiency letter to Bouldin in

which Bouldin was requested to identify the Alabama registered broker/dealer.

3. On January 17, 2006, the Commission staff received a response from Jean M. Brock, General Counsel for Bouldin, reflecting that no Alabama registered broker-dealer was involved in the offering in the State of Alabama. The response reflected that Bouldin engaged Respondent to assist in connection with certain matters, including the sale of stock to certain persons, and that Respondent advised Bouldin that he was not a registered broker-dealer in the State of Alabama. At no time did Respondent represent to Bouldin or anyone else that he was registered as a broker-dealer, agent, restricted agent or investment advisor representative in the State of Alabama.

4. On January 23, 2006, a member of the Commission staff spoke to Ms. Brock via telephone regarding the response of January 17, 2006. Ms. Brock stated Respondent had transacted securities business in the State of Alabama and received a commission. Respondent collected commissions totaling \$4,250.00 as a result of the sales to Alabama residents. The staff requested the names and addresses of the Alabama residents to whom stock was sold and additional information about the sales transactions, including the trade dates, number of shares sold, cost to the investors and the amount of commissions received by Respondent.

5. On January 27, 2006, the Commission staff received documentation from Ms. Brock that, partially based upon Respondent's efforts, Bouldin sold shares of its stock to two Alabama investors on or about November 15, 2004, September 27, 2005, and July 14, 2005. Respondent was paid a total of \$4,250.00 in commissions by Bouldin.

6. On January 27, 2006, a review of Commission records reflected that Respondent was never registered as a broker-dealer, agent, restricted agent or investment advisor representative in the State of Alabama.

7. The Commission conducted an investigation into the matters that had been brought to its attention.

8. On June 13, 2006, the Commission issued a Cease and Desist Order directing Respondent to cease from assisting in further offers or sales of securities into, within or from the state of Alabama.

9. On July 7, 2006, Respondent informed his chief compliance officer at PFM Advisor that he was subject to a Cease and Desist Order from the Alabama Securities Commission as a result of Respondent's outside business activities.

10. On July 11, 2006, a letter written by Respondent dated July 5, 2006 was received by the Commission. In his letter, Respondent discussed his involvement with, his investments in, and his sales activities on behalf of Bouldin. Respondent narrated the events which culminated in his sales of investments in Bouldin Corp. Respondent also telephoned the commission on that date and submitted, by facsimile, a written request for an informal hearing.

11. On July 21, 2006, attorney Henry H. Hutchinson met with Commission staff on behalf of Respondent. Several questions were raised by the staff concerning Respondent's activities on behalf of Bouldin, his involvement with Bouldin, and the investments he sold in Bouldin.

12. On August 1, 2006, Mr. Hutchinson submitted a second written response from Respondent to the Commission. In the second response, Respondent answered the additional questions that had been raised by the staff and submitted documentation in support thereof.

13. On August 3, 2006, an informal hearing was held at the Commission at

which Respondent appeared represented by Mr. Hutchinson.

14. On October 9, 2006, Bouldin Corporation voluntarily offered rescission to three Alabama residents identified by Bouldin (not by Respondent) as having purchased shares in Bouldin based on the efforts of Respondent. Two of those investors partially accepted rescission offers and were paid a total of \$81,146.57 by Bouldin in checks dated January 3, 2007. The third investor identified by Bouldin declined the rescission offer.

15. On February 15, 2007, Bouldin submitted a copy of Bouldin Corporation Policy No. 001-07, which sets forth Bouldin's written policy intended to ensure compliance with state laws regarding the sale of securities. The policy states that no dealers or agents shall be retained to sell Bouldin securities until proof of registration and/or license from the state in which the transaction is intended to occur has been provided to Bouldin and a copy of the registration or license is on file in Bouldin's legal department.

16. Respondent has represented to ASC that he did not willfully violate any Alabama securities laws. Respondent has represented to ASC that he did not physically enter the State of Alabama in connection with the Bouldin stock sales and that he did not have direct contact with two of the three Alabama purchasers who were identified by Bouldin as having purchased stock as a result of Respondent's efforts. Respondent admits that he received commissions from Bouldin in the amount of \$4,250.00 based on sales resulting from his efforts in arranging contact with the Alabama investors. Respondent has represented to ASC that he has fully cooperated with the Commission's staff in connection with this matter.

CONCLUSIONS OF LAW

17. Pursuant to Code of Alabama, 1975, Section 8-6-3(a) it is unlawful for any

person to transact business in the State of Alabama as a dealer or agent for securities unless properly registered. Respondent, without benefit of broker-dealer, agent or issuer agent registration, provided, directly or indirectly, Alabama residents with information concerning a securities offering by Bouldin which resulted in the sale of shares issued by Bouldin to some Alabama investors. Respondent's actions were in violation of Section 8-6-3(a), Code of Alabama (1975).

WHEREAS, Respondent does not deny that he was involved in Bouldin stock sales to certain Alabama residents and admits that securities transactions were effected in the state of Alabama prior to registration; Respondent states that the information RESPONDENT provided and the assertions Respondent made to the Commission are true and correct to his knowledge; Respondent understands that the Commission relied in part upon the information he provided and the assertions he made as grounds for the resolution of this matter; and Respondent understands that should the information that Respondent provided or the assertions that Respondent made prove to be incorrect or misrepresented, the Commission may seek other administrative, civil or criminal remedies.

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 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 any security offered or sold by Respondent in the State of Alabama is registered, or subject to a perfected exemption.

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 FOUR THOUSAND TWO HUNDRED AND FIFTY Dollars (\$4,250.00), said funds to be tendered 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 of the Commission's cost of investigating this matter, the sum of ONE THOUSAND DOLLARS (\$1,000), said funds to be tendered contemporaneously with the entry of this Order.

5. That the entry of this Order resolves the Cease and Desist Order, Administrative Order No. CD-2006-0026, issued JUNE 13, 2006 to Respondent.

AGREED AND CONSENTED to on dates indicated:

RESPONDENT:



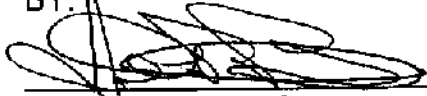
DAVID A. COSTELLO, JR.

5/21/2007
DATE of Respondent's Signature

APPROVED AND ORDERED this 29th day of May, 2007



ALABAMA SECURITIES COMMISSION
770 Washington Avenue, Suite 570
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(334) 242-2984

BY: 

JOSEPH P. BORG
Director