

STATE OF ALABAMA
ALABAMA SECURITIES COMMISSION

IN THE MATTER OF:

EVINCO ENTERPRISES, LLC
DWAYNE LINDLEY
JOHNATHAN PHILLIPS

RESPONDENTS

)
ADMINISTRATIVE ORDER
NO. CD 2008-0029

CEASE AND DESIST ORDER

The Alabama Securities Commission ("Commission"), having the 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:

RESPONDENTS

1. **EVINCO ENTERPRISES, LLC, (EVINCO)** is a limited liability company organized under and pursuant to the laws of the State of Alabama, with a business address of 3755 6th Street, Tuscumbia, Alabama 35674.
2. **DWAYNE LINDLEY, (LINDLEY)** at all times relevant, was described as a "member" and the registered Agent for EVINCO, as described on the Alabama Secretary of State's website, with an address of 600 Firestone Avenue, Suite 212, Muscle Shoals, Alabama 35661.
3. **JOHNATHAN PHILLIPS, (PHILLIPS)** at all times relevant, was identified as a "member" of EVINCO, as described on the Alabama Secretary of State's website, with an address of 3755 6th Street, Tuscumbia, Alabama 35674.

STATEMENT OF FACTS

4. In April of 2006, **LINDLEY** and **PHILLIPS** approached an Alabama resident and solicited her to invest \$12,000 to be used as operating capital for **EVINCO**. **LINDLEY** and **PHILLIPS** represented to the investor that the funds would be used as start up capital to organize **EVINCO**. **EVINCO** would then purchase and distribute welding wire. As part of the verbal contract/agreement between **RESPONDENTS** and the Alabama investor, the **RESPONDENTS** agreed to repay the Alabama investor the principal and interest and to provide the Alabama investor with stock in **EVINCO** once organized.

5. On May 1, 2006, the Alabama resident issued a personal check in the amount of \$12,000 drawn on her account and made payable to **PHILLIPS**.

6. A review of the Alabama Secretary of State's website, corporate entities listing for the **RESPONDENTS** and their purported agents, revealed **EVINCO** was incorporated by **LINDLEY** and **PHILLIPS** in Colbert County, Alabama on May 31, 2006.

7. On August 18, 2006, the Alabama investor was again solicited for investment funds into **EVINCO**. The investor used, as collateral, a certificate of deposit owned by her and held at the Railways Employees Credit Union and obtained a loan in the amount of \$20,000. This money was then given to **RESPONDENTS** to be utilized as operating capital in **EVINCO**. The verbal contract/agreement, between the Alabama resident and **RESPONDENTS**, was for the repayment of the \$20,000 with interest and the issuance of stock in **EVINCO** at a later date.

8. On May 21, 2007, the Alabama investor was again solicited for investment funds into **EVINCO**. The investor used, as collateral, a certificate of deposit owned by her and held at the First Metro Bank of Florence, Alabama and obtained a loan in the amount of \$40,000. This money was then given to **RESPONDENTS** to be utilized as operating capital in **EVINCO**. The verbal contract/agreement, between the Alabama resident and

RESPONDENTS, was for the repayment of the \$40,000 with interest and the issuance of stock in **EVINCO** at a later date.

9. On September 12, 2008, a review of the Commission's registration files disclosed no record of registration for **RESPONDENTS** as a Dealer or Agent for securities in the state of Alabama.

10. On September 12, 2008, a review of the Commission's registration files disclosed no record of registration, or any perfected exemption from registration, in the state of Alabama for the investment contract verbally entered into between the Alabama resident and the **RESPONDENTS**.

CONCLUSIONS OF LAW

11. Pursuant to Section 8-6-2(10), Code of Alabama 1975, the definition of "security" includes any investment contract. The verbal agreements, as described above, fall within the definition of an investment contract and are therefore securities under the statutory definition set forth in the Act.

12. In Accordance with Section 8-6-2(2), Code of Alabama 1975, the definition of "Agent" includes any individual who represents a dealer or an issuer in effecting or attempting to effect sales of securities. **LINDLEY** and **PHILLIPS** acted as an Agent of **EVINCO** when soliciting investment funds from the Alabama resident.

13. Pursuant to Section 8-6-3(a), Code of Alabama 1975, it is unlawful for any person to transact business in this state as a Dealer or Agent for securities unless he is registered under this article. It is unlawful for any dealer or issuer to employ an Agent unless the Agent is registered. **RESPONDENTS**, while not being registered as a Dealer or Agent in the state of Alabama, have transacted business by effecting securities transactions with an Alabama resident in violation of the Act.

14. Section 8-6-4, Code of Alabama 1975 states: "It is unlawful for any person to offer or sell any security in this state unless it is registered under this article; the security is exempt from registration under Section 8-6-10; or the transaction is exempt under Section 8-6-11." The securities offered and sold by the **RESPONDENTS** were neither registered nor exempt from registration in Alabama at the time of solicitation or sale in violation of the Act.

This Order does not prevent the Commission from seeking such other civil or criminal remedies that are available to it under the Act.

This Order is appropriate in the public interest for the protection of investors and is consistent with the purposes of the Act.

ACCORDINGLY, IT IS HEREBY ORDERED that EVINCO, DWAYNE LINDLEY and JOHNATHAN PHILLIPS immediately CEASE AND DESIST from further offers or sales of any security into, within or from the state of Alabama.

Entered at Montgomery, Alabama, this 19 day of September 2008

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


J. RANDALL McNEILL
Deputy Director