

IN THE MATTER OF:)
)
FLORIDA CAPITAL APARTMENT)
PARTNERS (JACKSONVILLE), LTD.)
FLORIDA CAPITAL SECURITIES CORP))
STEPHEN AUSTIN SELBY)
)
)
RESPONDENTS)
_____)

3. STEPHEN AUSTIN SELBY ("RESPONDENT SELBY") is a Florida registered securities agent of RESPONDENT FCSC (**not registered in Alabama**), with a business address of 300 International Parkway, Suite 130, Heathrow, FL 32746.

STATEMENT OF FACTS

4. On May 3, 2002, an application was filed with the Commission pursuant to Rule 506 of Regulation D, on behalf of RESPONDENT FCAP. Review of the Form D disclosed that 2 sales, totaling \$40,000, had allegedly been made to 2 Alabama residents. The cover letter accompanying the application, reflects the statement **"Please be advised that the sale in the State of Alabama was made by Stephen A. Selby of Florida Capital Securities Corporation, whose information is reflected on Page 3 of Form D."** Further, item 4a, page 4, of the Form D cites that "Sales Commissions" in the amount of \$909,000 will be an expense in connection with the issuance and distribution of the securities in the offering.

5. On May 9, 2002, a deficiency letter was dispatched to RESPONDENT FCAP for information regarding the number of offers or sales that had occurred in, or that had been made to a resident of, the state of Alabama. To be included in the response was the name and address of each purchaser, amount purchased, date purchased, the salesman for each transaction, and the commission or remuneration received either directly or indirectly by any individual for the offer or sale of the securities of the offering.

6. Review of the files of the Alabama Securities Commission disclosed no record of the registration of RESPONDENT SELBY as an agent in the state of Alabama.

7. On May 16, 2002, a Cease and Desist Order was issued to RESPONDENTS alleging that RESPONDENT FCSC failed to properly supervise the activities of its agent, RESPONDENT SELBY, by allowing him to sell the securities of FACP to residents of the state of Alabama without benefit of registration as an agent, and that RESPONDENT SELBY, without benefit of registration as an agent in the state of Alabama, sold the securities of RESPONDENT FCAP without benefit of registration.

8. By letter, dated May 14, 2002, counsel for RESPONDENT FCSP responded to the Commission's deficiency letter and substantially furnished advice that RESPONDENT SELBY sold the securities of RESPONDENT FCAP to 2 Alabama residents in the aggregate amount of \$40,000. Counsel for RESPONDENTS followed this letter up with a telephone call to the Commission staff with advice that the sales were unwittingly effected and RESPONDENTS were desirous of making rescission offers to the Alabama investors.

9. By letter, dated May 24, 2002, counsel for RESPONDENTS was advised that rescission offers were required to be made to the 2 Alabama residents named in counsel's response of May 14, 2002. By return letter, dated May 31, 2002, counsel for RESPONDENTS furnished advice that some facts and questions needed clarification, which are set forth substantially as follows:

- a. The two sales in Alabama took place pursuant to a Rule 506 Offering Exemption under Regulation D from registration.
- b. RESPONDENT FCSC was a duly registered Broker Dealer in Alabama at the time of the two sales. Therefore, it committed no violation. Further, counsel has determined that RESPONDENT SELBY had inadvertently been involved in the sales thinking he was a duly registered agent in Alabama.
- c. It has been determined that the proceeds from the sale are still held in escrow.
- d. Questions:
 - (1) Is it possible for RESPONDENT FCSC to register RESPONDENT SELBY now and pay his commission post-sale?
 - (2) Or, should RESPONDENT FCSC receive the commissions from the issuer out of escrow and not remit them to RESPONDENT SELBY?
 - (3) Or, should the issuer offer to rescind the two sales even though the funds are still in escrow?

10. By letter, dated June 10, 2002, counsel for RESPONDENTS was advised that the Commission believed the matter can only be resolved by rescission offer. Counsel for RESPONDENTS subsequently furnished evidence that rescission offers in the aggregate amount of \$45,000 had been made to, and rejected by, the 2 Alabama residents.

CONCLUSIONS OF LAW

11. RESPONDENT SELBY, an agent of RESPONDENT FCSC, without benefit of registration as an agent in the state of Alabama, sold the securities of RESPONDENT FCAP to residents of the state of Alabama.

12. The sale of securities by an unregistered dealer or agent in the state of Alabama is a violation of Section 8-6-3(a), Code of Alabama 1975., which cites **"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."**, and a violation of the Commission policy statement concerning Rule 506 Limited Offering Exemption filings which states **"No commission, finders fee or other remuneration shall be paid or given, directly or indirectly, to any person for soliciting any prospective purchaser in this state, unless such person is registered as a broker-dealer agent in this state pursuant to Code of Alabama 1975, Section 8-6-3."**

13. RESPONDENT FCSC has failed to properly supervise the activities of its agent, RESPONDENT SELBY, by allowing him to sell the securities of FACP to residents of the state of Alabama without benefit of registration as an agent.

14. Failure to exercise diligent supervision over all the securities activities of associated persons is a violation of Commission Rule 830-X-3-.13.

WHEREAS, RESPONDENTS admit that securities transactions were effected in the state of Alabama, by RESPONDENT SELBY, an unregistered (in Alabama) agent of RESPONDENT FCSC, but state that the sales were inadvertent and RESPONDENT SELBY was under the belief that he was a registered Alabama agent of RESPONDENT FCSC. RESPONDENTS state that the information and assertions presented to the Commission during its investigation of this matter are true and correct; that RESPONDENTS understand 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 Act, and

WHEREAS, RESPONDENTS have voluntarily waived all rights to a hearing upon the entry of this Order, and have 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 RESPONDENTS 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 SELBY, 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 FCSC 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, RESPONDENTS FCSC and SELBY shall collectively 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, RESPONDENTS FCSC and SELBY shall collectively 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 Order resolves the Cease and Desist Order, Administrative Order No. CD-2002-0009, issued May 16, 2002 to RESPONDENTS.

AGREED AND CONSENTED to on dates indicated:

RESPONDENTS
FLORIDA CAPITAL SECURITIES CORP.

BY: [Signature]
TITLE: President
DATE: 7-25-02

STEPHEN AUSTIN SELBY

BY: [Signature]
DATE: 7-25-02

APPROVED AND ENTERED this 29th day of July, 2002.

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

[Signature]
SUSAN B. ANDERSON
Deputy Director

