# STATE OF WASHINGTON DEPARTMENT OF FINANCIAL INSTITUTIONS SECURITIES DIVISION 

IN THE MATTER OF DETERMINING ) Order Number S-10-022-10-SC01
Whether there has been a violation of the )
Securities Act of Washington by: ) STATEMENT OF CHARGES AND
) NOTICE OF INTENT TO ENTER AN
Russillo's, LLC and Brandon Scott ) ORDER TO CEASE AND DESIST
Russell,
) AND TO CHARGE COSTS
)
Respondents )

THE STATE OF WASHINGTON TO: Russillo's, LLC Brandon Russell

## STATEMENT OF CHARGES

Please take notice that the Securities Administrator of the State of Washington has reason to believe that Respondents, Russillo's, LLC and Brandon Scott Russell, have each violated the Securities Act of Washington and that their violations justify the entry of an order of the Securities Administrator under RCW 21.20.390 to cease and desist from such violations and to charge costs. The Securities Administrator finds as follows:

## TENTATIVE FINDINGS OF FACT

## Respondents

1. Russillo's, LLC ("Russillo's") is a Washington limited liability company that was formed on December 16, 2005. Russillo’s had its principal place of business in Yakima, Washington. Russillo's was formed to own and to develop and operate a chain of themed Italian restaurants featuring pizza and gelato.
2. Brandon Scott Russell ("Russell") was the president and a managing member of Russillo’s, LLC from at least 2005 through 2007.

## Nature of the Offering

3. During 2006 and 2007, Respondents, Russillo’s and Russell, each offered and sold more than $\$ 150,000$ worth of Class " $B$ " limited liability company membership investments in Russillo's to approximately twenty investors who resided in the state of Washington. Respondents each represented to investors that the Class B memberships were non-voting membership interests that would earn $25 \%$ of the gross profits from Russillo's. Respondents each represented that the Class "A" membership interests would also earn $25 \%$ of the gross profits from Russillo's and, as a Class A member, Russell would receive his share of the company's gross profits. Respondents each represented to investors that the remaining 50\% of the company's gross profits would be reinvested in Russillo's. Respondents each failed to disclose to investors how the gross profit would be calculated or when the profit distributions would be paid.
4. The Class B investor funds were pooled together and were used to pay Russillo’s business expenses. Most of the investors who purchased Class B memberships did not actively participate in the management of Russillo's. The Class B investors did not have any control over the use of their invested funds and they relied upon Respondents, Russillo's and Russell, to operate the business and to generate a return on their investment.
5. Generally, the Class B membership investments were sold to Russillo’s restaurant customers. During 2006 and 2007, Russillo’s had two restaurant locations. In at least one of
the restaurants, there was a sign posted that invited customers to ask about becoming involved in Russillo's. If a customer expressed interest, Respondents would offer and sell the investor a Class B membership investment in Russillo’s. Most of the investors did not have a prior business relationship with Russillo's, other than being restaurant customers, and most of the investors did not have a prior personal or business relationship with Russell.

## Misleading Financial Projections

6. When offering and selling the Russillo's Class B membership investments, Respondents, Russillo's and Russell, gave investors a booklet of information about the investment. The booklet included financial projections. Respondents each forecasted the opening of at least 15 new restaurants, in addition to the two restaurants that were actually opened. Respondents each projected that Russillo's would have total profits of approximately $\$ 320,000$ for 2006; approximately $\$ 6,000,000$ for 2010; and more than $\$ 8,800,000$ for 2011. Respondents each projected that investors would earn a six-year return on investment of more than ten times the amount invested. Respondents each failed to provide a reasonable basis for the projections.
7. Although the booklet did include some historical operating results, the financial projections were misleading. The projections were based upon the opening of numerous additional stores and were not reasonable given the company's limited operating history and the size of its current operations. Respondents each failed to disclose to investors the amount of funds that would be required in order to open additional restaurants, the risk of inadequate funding, the risks associated with operating the restaurants, and the basis for the assumptions that were underlying the financial projections. In fact, the company never opened more than
two restaurants. Russell, doing business as Russillo’s, LLC, filed for bankruptcy in July 2008 and the investors were never repaid.

## Misleading Statements of Value

8. During March 2007, Respondents, Russell and Russillo’s, each offered Class B membership unit investments in Russillo’s. In a "State of the Company" report for October 1, 2006 to March 1, 2007, Russell told Russillo’s investors that "B units are available now for only $\$ 2.00$ a unit, so move quick while supplies last." Respondents each failed to provide any reasonable basis for valuing the Class B membership units at $\$ 2.00$ per unit.
9. Russell also sent a letter dated March 27, 2007 to Russillo’s investors. The letter stated that "As of March 26, the B unit shares of Russillo’s have officially split....Your units have now doubled in number and been returned to their $\$ 2.00$ value." As of March 26, 2007, there was no reasonable basis for establishing a $\$ 2.00$ per unit value for Class B membership interests in Russillo's. The letter also contradicted a statement in the Russillo's handbook, which said that the offering price of the units had been arbitrarily determined and had no relationship to the company's book value, net worth, assets, or earnings.

## Misrepresentations or Omissions

10. When offering and selling the Russillo’s Class B membership investments, Respondents, Russillo’s and Russell, Respondents each failed to disclose significant risks of the investment. Respondents each failed to disclose to investors that Russell had previously operated a failed camera crane rental business in Los Angeles, California and that Russell had filed for bankruptcy. Respondents also failed to disclose other risks of the Russillo's
investment, including unprofitability, competition, inadequate capitalization, and general economic and business conditions.

## Registration Status

11. Russillo's is not currently registered to sell its securities in the state of Washington and has not previously been so registered.
12. Russell has never been registered as a securities broker-dealer or a securities salesperson in the State of Washington.

Based upon the Tentative Findings of Fact, the following Conclusions of Law are made:

## CONCLUSIONS OF LAW

## I.

The offer or sale of the limited liability company investments described in the Tentative Findings of Fact constitutes the offer or sale of a security, as defined in RCW 21.20.005(10) and (12), whether in the form of an investment contract, risk capital, or participation in a profitsharing agreement.
II.

As described in the Tentative Findings of Fact, Respondents, Russillo's and Russell, each violated RCW 21.20.140 by offering and selling said securities because no registration for such offer or sale is on file with the Securities Administrator.

## III.

As described in the Tentative Findings of Fact, Russell has violated RCW 21.20.040 by offering and selling said securities while not registered as a securities broker-dealer or securities salesperson.
IV.

As described in the Tentative Findings of Fact, Respondents, Russillo’s and Russell, each violated RCW 21.20.010 because, when offering and selling said securities, Respondents each made untrue statements of a material fact or omitted to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.

## NOTICE OF INTENT TO ORDER RESPONDENTS TO CEASE AND DESIST

Based on the above Tentative Findings of Fact and Conclusions of Law, the Securities Administrator intends to order, pursuant to RCW 21.20.390, that Russillo's, LLC and Brandon Scott Russell, and their agents and employees, each shall cease and desist from any violation of RCW 21.20.010, RCW 21.20.040, and RCW 21.20.140.

## NOTICE OF INTENT TO CHARGE COSTS

Pursuant to RCW 21.20.390, and based upon the above Tentative Findings of Fact and Conclusions of Law, the Securities Administrator intends to order that Brandon Scott Russell shall be liable for and shall pay costs of $\$ 2,500$.

## AUTHORITY AND PROCEDURE

This Statement of Charges is entered pursuant to the provisions of chapter 21.20 RCW, the Securities Act of Washington, and is subject to the provisions of chapter 34.05 RCW. The respondents, Russillo's, LLC and Brandon Scott Russell, may each make a written request for a hearing as set forth in the NOTICE OF OPPORTUNITY TO DEFEND AND OPPORTUNITY FOR HEARING accompanying this order.

If a respondent fails to make a timely hearing request, the Securities Administrator intends to adopt the above Tentative Findings of Fact and Conclusions of Law as final and to enter a permanent order as to that respondent and to charge any costs sought against that respondent.

Dated this 5th day of May, 2010

> Chn Sha
> SUZANNE SARASON
> Chief of Enforcement

Presented by:


Janet So<br>Enforcement Attorney

