400024-034999

STATE OF WASHINGTON
DEPARTMENT OF FINANCIAL INSTITUTIONS
SECURITIES DIVISION

IN THE MATTER OF DETERMINING Whether there has been a violation of the Securities Act of Washington by: Cyril W. Randell and Cyril W. Randell & Associates, Inc. Respondents	SDO 98 - 28 CONSENT ORDER Case No: 97-10-469

4/004099

THE STATE OF WASHINGTON TO: Cyril W. Randell
Cyril W. Randell & Associates

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The Securities Division of the Department of Financial Institutions has conducted an investigation into alleged violations of the Securities Act of Washington by Respondents Cyril W. Randell and Cyril W. Randell & Associates, Inc. The results of this investigation are set forth below under the headings "Tentative Findings of Fact" and "Conclusions of Law". Having been advised of the investigation, upon advice of counsel, for purposes of resolving this matter without further action by the Securities Division, and without incurring additional expense in defending this action, Respondents hereby agree to the entry of the Consent Order set forth below.

TENTATIVE FINDINGS OF FACT

I.

Cyril W. Randell is the owner and manager of Cyril W. Randell & Associates, Inc.

II.

Cyril W. Randell & Associates, Inc. is a Washington corporation engaged in the business of originating and acquiring loans secured by real property. Its principal place of business is in Bothell, Washington.

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III.

Respondents broker loans. A typical loan transaction consists of money given to a borrower in exchange for a promissory note secured by a deed of trust on the borrower's real property. All notes and deeds of trust run in favor of Cyril Randell & Associates, Inc.

IV.

To fund these transactions, Respondents sell partial interests ("participations") in the underlying loan documents to individual investors. Investors then purchase an interest in a particular loan by signing an agreement and tendering payment to Respondents.

V.

Respondents perform all significant services relating to the participation loans on behalf of the investors. They locate borrowers, decide upon their creditworthiness, obtain valuations of property, prepare necessary paperwork, and record documents of title. As compensation for their services, Respondents charge borrowers a fee at closing equal to 10% of the loan amount.

VI.

After closing, Respondents act as the investors' agent in servicing the loans. They collect payments from borrowers and remit them to each investor in proportion to his or her fractional share of the underlying loan transaction. Respondents retain possession of all original loan documents and, if necessary, agree to institute foreclosure proceedings on behalf of the investors.

VII.

Respondents advertised their participation loans in several publications available to the general public. In one advertisement, Respondents promised to pay investors a 14% annual return and invited interested parties to inquire about their program by calling a toll-free telephone number.

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VIII.

There are 63 current investors in Respondents' loan program and approximately $4,000,000 worth of participation loans currently outstanding. The majority of the investors are residents of Washington state.

IX.

Respondents do not provide investors with a written disclosure document such as a prospectus or offering circular. Investors typically receive copies of the participation agreement, promissory note, and deed of trust.

X.

The following information was not generally disclosed to investors: the proposed use of the loan proceeds; financial data relating to the borrower's ability to repay its debt; specific information about the value of the property offered as collateral such as that contained in a professional appraisal or assessment; and specific information about the existence of other encumbrances on the property such as that contained in a professional title report.

XI.

Respondents did not disclose that their failure to assign and record a separate interest in the loan property for each loan participant might adversely affect the investors' ability to recover their respective investments in the event that Respondents filed for bankruptcy or that the property became the subject of litigation. Respondents did not inform investors that some loan transactions were conducted without an independent escrow agent or that some were conducted without any escrow agent at all. Finally, Respondents did not tell investors that they could experience losses in excess of their original investment if the underlying property became the subject of litigation or it became necessary to institute foreclosure proceedings.

XII.

Cyril W. Randell & Associates, Inc. is not currently registered to sell securities in the state of Washington and has not previously been so registered.

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XIII.

Respondents are not currently registered as a securities salesperson or broker-dealer in the state of Washington and have not previously been so registered.

CONCLUSIONS OF LAW

I.

The offer and/or sale of the participation loans described above constitutes the offer and/or sale of a security as defined in RCW 21.20.005(10) and (12), to wit: a note, investment contract, or profit-sharing agreement.

II.

The offer and/or sale of said securities is in violation of RCW 21.20.140 because no registration is on file with the Administrator of Securities, state of Washington.

III.

Respondents have each violated RCW 21.20.040 by offering and/or selling said securities while not registered as a securities salesperson or broker-dealer in the state of Washington.

IV.

Respondents have each violated RCW 21.20.010 by omitting material facts about their investment program as described in Paragraphs IX, X, and XI.

CONSENT ORDER

Respondents neither admit nor deny the foregoing Findings of Fact and Conclusions of Law but have agreed to resolve these allegations by entering this Consent Order. Respondents hereby acknowledge that the Securities Division has jurisdiction over this matter and authority to enter this order. Respondents also waive their right to an administrative hearing. In consideration of the foregoing, the Securities Division and Respondents agree as follows:

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IT IS AGREED AND ORDERED that Respondents shall send a copy of this order by certified mail or other equivalent means to each current participation loan investor and shall, within 30 days from the entry of this order, provide the Securities Division with proof of mailing or other notice. Failure to do so shall be grounds to vacate this consent order.

IT IS AGREED that Respondents shall assign to each current participation loan investor his or her fractional interest in the borrower's note and the deed of trust which secures performance thereunder and shall properly record the assignment of such interest. Respondents shall furnish the Securities Division, within 120 days from the entry of this order, with proof that such interests were assigned and recorded. Failure to do so shall be grounds to vacate this consent order.

IT IS AGREED AND ORDERED that, for a period of three years from the date of entry of this Consent Order, the exemptions from registration provided by RCW 21.20.320(9) and RCW 21.20.320(11) are hereby revoked as to each Respondent and any entity in which Respondents may act as officer, director, or 10% shareholder. The availability of the exemption from registration provided by RCW 21.20.320(5) is hereby conditioned for a period of three years upon delivery to each potential investor of an offering circular substantially similar in scope and content to Appendix A. This Consent Order shall not affect the availability of any other exemption from registration including, but not limited to, WAC 460-44A-505 and WAC 460-44A-506.

IT IS AGREED AND ORDERED that, prior to the entry of this Consent Order, Respondents shall deliver a check in the amount of $1,000 to the Securities Division to reimburse its costs of investigation. This check shall be made payable to State Treasurer.

IT IS AGREED AND ORDERED that Respondents shall each cease and desist from sales of unregistered securities in violation of RCW 21.20.140.

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IT IS AGREED AND ORDERED that Respondents shall each cease and desist from acting as an unregistered securities broker/dealer or salesperson in violation of RCW 21.20.040.

IT IS AGREED AND ORDERED that Respondents shall each cease and desist from violations of RCW 21.20.010.

IT IS AGREED that the Securities Division shall have the right to reopen its investigation of this matter and take additional enforcement action if it finds that any fact upon which this Consent Order is based has been misrepresented by Respondents.

WILLFUL VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE.

Cyril W. Randell — Date

Cyril W. Randell & Associates, Inc. — Date

Approved for entry:
TOUSLEY BRAIN PLLC

Kim Stephens
Attorneys for Respondents — Date Sept 15, 1998

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LAW OFFICES OF JACK G. ORR. P.S.

for Jack G. Orr by telephone authorization 9/15/98
Attorney for Respondents

9/15/98
Date

DATE OF ENTRY: 9/30/98

STATE OF WASHINGTON
ADMINISTRATOR
SECURITIES DIVISION
DEPARTMENT OF FINANCIAL INSTITUTIONS

Deborah R. Bortner
Securities Administrator

Steven Raney
Securities Examiner

Michael E. Stevenson
Chief of Compliance

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SAMPLE SPECIFIC OFFERING CIRCULAR

Dated_____

Prepared by

_____

_____

_____

These securities involve a high degree of risk, and may require additional expenditures if a default should occur. Investors are urged to carefully read all offering documents in their entirety to determine whether this is a suitable investment.

Summary of the Offering

Loan Name:
Offering Number:
Note Amount:
Note Interest Rate:
Minimum Investment:
Description of the Offering:

This mortgage paper securities offering has been registered with the Securities Division of the State of Washington under the provisions of WAC 460-33A.

The registration of these securities by the Washington Securities Administrator does not signify that the administrator has approved or recommended these securities, nor has the administrator passed upon the adequacy or accuracy of this specific offering circular. Any representation to the contrary is a criminal offense. The Mortgage Paper Security offered herein is subject to investor suitability requirements under the provisions of WAC 460-33A-031 (See "Investor Suitability Requirements" in General Offering Document).

Remedies are available to the investor for false and misleading statements in connection with this offering (See "Remedies to Investors").

NOTE: This document is not complete unless accompanied by a General Offering Document, which should be read in conjunction with this document.

Terms of the Offering

Total Offering:
Price Per Unit:
Number of Units Offered:
Minimum Purchase:
Commissions to be Paid by Investors:
Other Fees/Expense to be Paid by Investors:
Loan Servicing Fee:

Investor Discount, If Applicable

Discount from Principal Amount:
Price Per Unit:
Effective Yield:

Loan Terms

Loan Amount:
Note Rate:
Payment Terms:

Maturity Date:
Baloon Payment:
Prepayment Penalties:
Late Charges:
Disposition:
Other Terms/Conditions:

Security Interest

Lien Type & Priority:
Description of Senior Encumbrances:

Description of Junior Encumbrances:

Borrower Information

Name:
Address:

Employment:

Number of Years:
Income (see exhibit attached):

Credit History:

Property Information

Address:

Description:

Appraisal Value:
Date of Appraisal:
Assessed Value:
Insurance Information:

Loan to Value Ratios

Based on Appraised Value:

Based on Assessed Value:

Use of Proceeds

Gross Loan Amount:
Brokerage Commissions:

Closing Costs:

Net Proceeds:

Use of Net Proceeds:
(List by dollar amount, greatest to least)

Total Use of Net Proceeds:

Explanation of Use of Proceeds:

Expected Source of Loan Repayr

Special Risks

Exhibits

Loan Application ..... Exhibit A
Financial Statements/Tax Returns ..... Exhibit B
Credit Report ..... Exhibit C
Note & Security Instrument ..... Exhibit D
Appraisal & Tax Valuation Statement ..... Exhibit E
Escrow Agreement ..... Exhibit F
Title Insurance Report ..... Exhibit G
Affidavit of Business Purpose ..... Exhibit H
Loan Servicing Agreement ..... Exhibit I
Participation Agreement ..... Exhibit J
Suitability Questionnaire ..... Exhibit K

Other Exhibits:

Prepared by

_____

_____

_____

Acknowledgement of Receipt

The undersigned hereby acknowledges receipt of the following documents:

☐ Mortgage Paper General Offering Circular dated _____

☐ Specific Offering Circular Number _____

Exhibits: Loan Application
Financial Statement/Tax Returns
Credit Report
Note & Security Instrument
Appraisal & Tax Valuation Statement
Escrow Agreement
Title Insurance Report
Affidavit of Business Purpose
Loan Servicing Agreement
Participation Agreement
Suitability Questionnaire
Others:

Investor Signatures:

Dated: _____ by: _____

Dated: _____ by: _____