BEFORE THE
DEPARTMENT OF BUSINESS OVERSIGHT
STATE OF CALIFORNIA

In the Matter of the Desist and Refrain Order of the Commissioner of Business Oversight, COMMISSIONER OF BUSINESS OVERSIGHT, Complainant, v. ALTITUDE ENTERTAINMENT FILMS, INC., and STEPHANE MARCHAND, Respondents.	OAH Case No.: 2016030179

DECISION

The attached Proposed Decision of the Administrative Law Judge of the Office of Administrative Hearings, dated April 14, 2016, is hereby adopted by the Department of Business Oversight as its Decision in the above-entitled matter, with technical or other minor changes on the attached Errata Sheet, pursuant to Government Code Section 11517(c)(2)(C).

This Decision shall become effective on August 27, 2016.

IT IS SO ORDERED this 28 day of July, 2016.

/S/
JAN LYNN OWEN
Commissioner of Business Oversight

State of California - Department of Business Oversight

ERRATA SHEET

(Changes to Proposed Decision – Altitude Entertainment Films, Inc. and Stephane R. Marchand)

1) On page 6 of the Proposed Decision, Paragraph 4g of the FACTUAL FINDINGS, line 4, delete "respondent" and insert instead "the investor".

2) On page 7 of the Proposed Decision, Paragraph 3 of the CONCLUSIONS OF LAW, line 1, delete "25109" and insert instead "25019".

3) On page 7 of the Proposed Decision, Paragraph 3 of the CONCLUSIONS OF LAW, line 4, delete "59" and insert instead "54".

BEFORE THE
DEPARTMENT OF BUSINESS OVERSIGHT
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In the Matter of the Desist and Refrain Order of the Commissioner of Business Oversight, COMMISSIONER OF BUSINESS OVERSIGHT, Complainant, vs. ALTITUDE ENTERTAINMENT FILMS, INC., and STEPHANE MARCHAND, Respondents.	OAH No. 2016030179

PROPOSED DECISION

David B. Rosenman, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on March 21, 2016, in Los Angeles, California. Complainant Mary Ann Smith, Deputy Commissioner, Enforcement Division, Department of Business Oversight (Department), was represented by Blaine Noblett, Senior Counsel for the Department. Respondents Altitude Entertainment Films, Inc. and Stephane Marchand did not appear for hearing despite being served with notice.

Evidence was received. The record was closed and the matter was submitted for decision on March 21, 2016.

FACTUAL FINDINGS

The Administrative Law Judge makes the following factual findings:

1. Complainant Mary Ann Smith signed the Desist and Refrain Order in her official capacity. In summary, the Desist and Refrain Order alleges that respondent Altitude

Entertainment Films, Inc. (respondent Altitude), acting through respondent Stephane Marchand (respondent Marchand), offered investment contracts that were securities to investors in California; no permit for sale was issued by the Department; there were misrepresentations or omissions in the offering process; and the Commissioner concluded the securities were subject to qualification and were being sold without being qualified. Violations of Corporations Code sections 25110 and 25401 were alleged.[1] The Desist and Refrain Order orders respondents to desist and refrain from offering the securities for sale until qualification is made or an exemption applies, and to correct misrepresentations or omissions in the offering process. Complainant bears the burden to prove these allegations. The standard of proof is preponderance of the evidence.

2. Respondents requested a hearing. Notice of the hearing was served on respondents at their address of record on file with the Department. This is the same address included in the respondents' request for a hearing. The notice of the hearing was served in compliance with Government Code sections 11440.20 and 11509. By virtue of respondents' failure to appear at the hearing, their defaults are noted and complainant presented evidence, under Government Code section 11520.

3. The evidence presented by complainant established the charging allegations of the Desist and Refrain Order (exhibit 1), paragraphs 1-11, as follows:

"1. [Respondent Altitude] is an active California corporation, formed on about July 28, 2014. [Respondent Altitude's] principal place of business is 1 Moonlight Isle, Ladera Ranch, California or 8730 Sunset Boulevard, West Hollywood, California. [Respondent Altitude] maintains a website at www.altitudeentertainmentfilms.com. According to the company's website, [respondent Altitude] funds, produces, and distributes films.

"2. [Respondent Marchand] is [respondent Altitude's] chief executive officer, president, and registered agent.

"3. [Respondent Altitude] and [respondent Marchand] sold securities in the form of [respondent Altitude] investment contracts to at least one investor, raising a total of approximately $200,000.00.

"4. [Respondent Marchand] solicits investors through the classified advertisements website Craigslist. One such posting read, "ARE YOU BROKE, WITH GREAT CREDIT? WE NEED YOU[;] 500K YEAR POSITION AVAIL (WE PUT 100K IN

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[1] All statutory references are to the Corporations Code unless otherwise indicated.

YOUR POCKET TODAY)." The classified advertisements reference Los Angeles, Orange, and San Diego Counties.

"5. At least one California resident responded to [respondent Marchand's] Craigslist advertisement, which promised "Big returns. No money down. Good credit score to apply for credit." During their face-to-face meeting in July of 2015, [respondent Marchand] told the investor that he needed a "credit partner," someone whose credit would be used to obtain loans to flip high-end properties within Orange County. In exchange for [the investor's] good credit, [respondent Marchand] promised returns of $100,000.00, on completion of funding, plus $50,000.00 per month. [Respondent Marchand] explained that the returns would be generated when the credit partner's funds were invested in the business and the business earned a profit. The credit partner would not manage or run the day-to-day operations of the business but would apply for and obtain loans or credit cards that would be used to fund [respondent Marchand's] business ventures. [Respondent Marchand] was to manage the credit partner's funds and seek out new business opportunities in real estate.

"6. In or about July 2015, [respondent Marchand] located a property in which to invest but the investor was unable to provide the 20%-30% cash deposit required by the lender to obtain the loan, so the parties abandoned the scheme.

"7. Shortly thereafter, [respondent Marchand] approached the investor about providing funding for [respondent Altitude]. [Respondent Altitude], according to [respondent Marchand], was his film company that was looking to invest in and acquire new business ventures, including an exotic car rental business and 'Speedweed.com,' a medical marijuana delivery service.

"8. On or about July 10, 2015, the investor, at [respondent Marchand's] urging, used a credit card broker to apply for and obtain 12 credit cards with lines of credit totaling $200,000.00. [Respondent Marchand] subsequently directed the investor to add [respondent Marchand's] name as an authorized signer on all 12 of the investor's credit card accounts. [Respondent Marchand] drew down the lines of credit, taking cash advances and using the same credit cards to purchase personal items, such as consumer electronics, gym membership, and children's clothing. [Respondent Marchand] explained that the cash advances would be invested in [respondent Altitude's] business ventures, including the exotic car rental business and Speedweed.com.

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"9. In or about September of 2015, after having exhausted the investor's credit card limits,[2] [respondent Marchand] demanded that the investor apply for and obtain additional credit cards. The investor refused.

"10. In connection with the offer and sale of these securities, the above described [respondent Altitude] investment contracts, [respondent Marchand] misrepresented or failed to disclose to investors the following material facts:

"a. In or about August 2000, the Bureau of Real Estate ('BRE') revoked [respondent Marchand's] real estate salesperson's license on the basis of his failure to disclose his April 1995 criminal conviction. According to the BRE's findings of law and fact, in or about April 1995, [respondent Marchand] was charged with violating section 1871.4 of the Insurance Code (False Workers' Compensation Insurance Claim) and section 148.5, subdivision (a) of the Penal Code (False Report of Criminal Offense). [Respondent Marchand] pled guilty to and was convicted of both violations.

"b. On or about January 25, 2001, [respondent Marchand] filed for voluntary Chapter 7 bankruptcy protection in the United States Bankruptcy Court for the Central District of California, case number 8:01-bk-0110607-RA.

"c. In or about April 2009, in the matter captioned *People v. Marchand*, Orange County Superior Court case number 09SF0432, the state charged [respondent Marchand] with violating section 487, subdivision (a), of the Penal Code (Grand Theft); sections 484, subdivision (a), through 488 of the Penal Code (Petty Theft); section 6126, subdivision (a), of the Business and Professions Code (Unauthorized Practice of Law); section 10130 of the Business and Professions Code (Engaging in Business as a Real Estate Broker without License); and section 594, subdivisions (a) and (b)(1) of the Penal Code (Vandalism). In or about June of 2009, [respondent Marchand] pled guilty and was convicted of violating sections 6126, subdivision (a), and 10130 of the Business and Professions Code.

"d. On or about July 13, 2012, [respondent Marchand] pled guilty and was convicted of second degree burglary under Penal Code sections 459 and 460, in the matter captioned *People v. Marchand*, Orange County Superior Court case number 11HF0592.

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[2] The evidence established that many of the credit card accounts were drawn to their credit limits or close to the limits.

"e. On or about September 18, 2014, the Department of Business Oversight issued [respondent Marchand] a desist and refrain order for violations of Corporations Code sections 29525 and 29536 of the California Commodity Law of 1990.

"f. On or about November 5, 2014, [respondent Marchand] filed for voluntary Chapter 13 bankruptcy protection in the United States Bankruptcy Court for the Central District of California, case number 8:14-bk-16543-ES.

"g. On or about January 2, 2015, [respondent Marchand] filed for voluntary Chapter 7 bankruptcy protection in the United States Bankruptcy Court for the Central District of California, case number 8:15-bk-10005-ES.

"11. These securities, the above described investment contracts, were sold in this state in issuer transactions. The Department of Business Oversight has not issued a permit or other form of qualification authorizing any person to offer or sell [respondent Altitude] investment contracts in this state."

4. The following additional, relevant facts were established:

a. Respondents did not pay to the investor the promised $100,000 signing bonus or $50,000 per month during the approximately three months of the relationship with the investor (July through September 2015). The only payment the investor received from respondent Marchand was $4,000, which partially paid some balances on the 12 credit accounts.

b. After several meetings and transactions, respondent Marchand mentioned to the investor that he had been charged with a crime, with no other details given.

c. On the advice of respondent Marchand, the investor used a credit broker to obtain the 12 credit cards, and paid a fee to the credit broker.

d. Respondent Marchand obtained cash advances from the credit accounts and also charged personal expenses to the credit accounts. Respondent Marchand told the investor that respondent Marchand would use his personal funds, in the amounts of the personal expenses he had charged, for the desired business investments and ventures, the profits from which were for the benefit of the investor and respondents.

e. Near the end of their relationship, the investor requested an accounting from respondent Marchand, and requested that respondent Marchand sign a promissory note for the balances accrued on the credit accounts. Respondent Marchand did not provide an accounting and did not sign the promissory note.

f. The investor made several minimum payments on the credit accounts. The investor has filed for bankruptcy.

g. After the relationship broke down, respondent Marchand sent text messages to the investor indicating that he had other investors and that his business ventures were successful. Several text messages contained profanities and insults directed at respondent and his family.

h. The Department searched its records and found no record of any qualification or permit authorizing the sale of securities by respondents.

5. The Commissioner of Business Oversight (Commissioner) concluded that the investment contracts offered by respondent Altitude and respondent Marchand are securities subject to qualification under the law and are being or have been offered or sold without first being qualified in violation of section 25110. Under section 25532, the Commissioner ordered respondent Altitude and respondent Marchand to desist and refrain from the further offer and sale of securities in California, including but not limited to respondent Altitude investment contracts, unless such sale has been qualified under sections 25111, 25112, or 25113 or unless such security or transaction is exempted or not subject to qualification.

6. The Commissioner also concluded that the securities respondent Altitude and respondent Marchand offered or sold were offered or sold by means of written or oral communications that include an untrue statement of a material fact, or omit to state a material fact necessary to make the statements made, in the light of the circumstances under which the statements were made, not misleading in violation of section 25401. The Commissioner also concluded that, under section 25532, respondent Altitude and respondent Marchand made, or caused to be made, misrepresentations or omissions of material fact in connection with the offer or sale of securities. The Commissioner ordered respondent Altitude and respondent Marchand to desist and refrain from offering or selling any security in the State of California by means of any written or oral communication which includes an untrue statement of material fact or omits to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

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CONCLUSIONS OF LAW

Based on the foregoing factual findings, the Administrative Law Judge makes the following conclusions of law:

1. Under section 25110, a seller of a security must either have qualified the offer and sale with the Commissioner or must operate under a recognized exemption from the qualification requirement.

2. As relevant here, under section 25532, the Commissioner can issue a desist and refrain order when, in the Commissioner's opinion, a security is being offered or sold without being qualified under section 25110, or in violation of other applicable laws. As relevant here, to establish a violation requires proof of a sale of a security through an offer made in California in an issuer transaction that has not been qualified by the Commissioner or is not exempt.

3. Securities are defined in section 25109. Investment contracts such as those involved herein are securities. A key criterion is that the investor is passive and relies upon the activities of others regarding the operation of the business. (*Los Angeles Met. Transit Authority v. Brotherhood of Railroad Trainmen* (1960) 59 Cal.2d 684, 688-689; *SEC v. Howey* (1946) 328 U.S. 293, 298-299.)

4. Respondent Marchand's offer of a signing bonus and monthly income, and business opportunities including respondent Altitude in exchange for use of the investor's credit accounts is the sale of a security under section 25017, subdivision (a). The sale took place in California, as defined under section 25008, subdivision (a), in that respondent Marchand and the investor are California residents, respondent Altitude is a California corporation, and significant contacts between respondent Marchand and the investor occurred in California.

5. The transactions are "issuer" transactions under section 25010 because a portion of the proceeds were used or intended, directly or indirectly, for the benefit of the issuer. Respondents were intended beneficiaries of the transactions. An issuer has been described as the organizer of a business who is responsible for its success or failure. (*SEC v. Murphy* (9th Cir. 1980) 626 F.2d 633, 642-644.)

6. There was no qualification or permit from the Department authorizing the sale of securities by respondents. (Factual Finding 4h.)

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7. Respondent Marchand, as the seller of the securities, has the burden of establishing that the sale or offer of a security meets an exemption under section 25163. (See also, *Johnston v. Bumba* (N.D. Ill. 1991) 764 F. Supp. 1263, 1277.)

8. Under section 25102, subdivision (f), a transaction is exempt from the requirements of section 25110 if it meets certain criteria, including: there are no more than 35 such sales (subd. (f)(1)); the purchaser represents that the purchase is for the purchaser's own account, and not for resale (subd. (f)(3)); and the offer and sale cannot be accomplished by the publication of any advertisement (subd. (f)(4)). Section 25102, subdivision (f)(2) states:

> All purchasers either have a preexisting personal or business relationship with the offeror or any of its partners, officers, directors or controlling persons, or managers (as appointed or elected by the members) if the offeror is a limited liability company, or by reason of their business or financial experience or the business or financial experience of their professional advisers who are unaffiliated with and who are not compensated by the issuer or any affiliate or selling agent of the issuer, directly or indirectly, could be reasonably assumed to have the capacity to protect their own interests in connection with the transaction.

Section 25102, subdivision (f)(4), also requires a seller to file a notice of any sales transactions for which the exemption is claimed.

9. There was no evidence that the sale of securities by respondents to the investor met any requirement for exemption from obtaining a qualification or permit from the Department authorizing the sale of securities.

10. Cause exists for the Commissioner to issue a desist and refrain order against respondents because a security is being offered or sold without being qualified under section 25110, or in violation of other applicable laws. See Factual Findings 1-5 and Conclusions of Law 1-9.

11. As relevant here, under section 25401, "it is unlawful for any person to offer or sell a security in this state . . . by means of any written or oral communication that includes an untrue statement of a material fact or omits to state a material fact necessary to make the statements made, in the light of the circumstances under which the statements were made, not misleading." Under section 25532, the Commissioner can order entities to desist and refrain from the offer or sale of a security in violation of section 25401.

12. No element of intent is needed to establish a violation of section 25401. (*People v. Simon* (1995) 9 Cal.4th 493, 515-516.) A fact or omission is considered material if a reasonable person would consider it significant in deciding whether to make an investment. (*Ins. Underwriters Clearing House, Inc. v. Natomas* (1986) 184 Cal.App.3d 1520, 1526.) The untrue statements and omissions by respondents here are material. See Factual Findings 3 and 4.

13. Cause exist for the Commissioner to issue a desist and refrain order against respondents because a security is being offered or sold by means of untrue statements of material fact or omissions of material facts, as described in section 25401. See Factual Findings 1-6 and Conclusions of Law 1-12.

ORDER

The Desist and Refrain Order issued to Altitude Entertainment Films, Inc. and Stephane Marchand, dated February 19, 2016, is affirmed.

DATED: April 14, 2016

/s/
DAVID B. ROSENMAN
Administrative Law Judge
Office of Administrative Hearings