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9
10 BEFORE THE DEPARTMENT OF CORPORATIONS
OF THE STATE OF CALIFORNIA

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12	THE CALIFORNIA CORPORATIONS) CRD No. 16274
13	COMMISSIONER,)
14	Complainant,) FILE NO. 915-1293
15	v.) STATEMENT IN SUPPORT OF ORDER
16	MONTEREY BAY SECURITIES, INC.) LEVYING ADMINISTRATIVE PENALTIES
17	and KENNETH DOOLITTLE, President,) PURSUANT TO CORPORATIONS CODE
18	Respondents.) SECTION 25252 AND CLAIM FOR
) ANCILLARY RELIEF PURSUANT TO
) CORPORATIONS CODE SECTION 25254
)

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20 Preston DuFauchard, the California Corporations Commissioner ("Commissioner") of the
21 Department of Corporations ("Department"), alleges and charges as follows:

22 1. The Corporate Securities Law of 1968 in California Corporations Code section 25000 et
23 seq., and the California Code of Regulations, title 10, section 260.000 et seq., contain provisions that
24 govern persons licensed to operate in the securities industry. To ensure the protection of the public,
25 the Commissioner requires compliance by licensees with the law and regulations. Licensees are
26 required to keep accurate books and records, to amend their respective applications by providing
27 current information to the facts stated therein and to pay fees.

28 2. Pursuant to Corporation Code section 25230 the Commissioner issued a broker-dealer
certificate to Respondent Monterey Bay Securities, Inc., ("MBS") a California corporation. MBS's

1 license application and associated file No. 915-1293 states its broker-dealer business would be
2 located at 11 Seascapes Village, Aptos, California. However, it is unclear where MBS's records are
3 maintained and currently located. The Commissioner on several occasions notified Respondents that
4 they were required to provide to the Department records associated with their broker-dealer business.

5 3. Since December 1984 Respondent Kenneth Doolittle also known as Ken Doolittle
6 ("Doolittle") was the president, financial and operations principal of MBS. Doolittle is also MBS's
7 sole shareholder and he manages, controls and directs MBS. There is such a unity of interest,
8 ownership, dominion and control of MBS by Doolittle that the corporate form should be disregarded.
9 Doolittle used his alter ego MBS and other entities he created and fictitious names as alter egos to
10 violate numerous provisions of the Corporations Code and rules and regulations thereunder.

11 4. The Commissioner notified Respondents that they were required to provide to the
12 Department records associated with their broker-dealer business but they have not done so.

13 5. Previously in 1998 the National Association of Securities Dealers ("NASD") in their case
14 number C 01970012 censured and fined Respondents for multiple securities violations including the
15 following: lack of adequate net capital for MBS (CRD 17274); failure to notify the Securities and
16 Exchange Commission ("SEC") and the NASD about this net capital deficiency; failure to have a
17 continuing education plan and failure to disclose and report as required an arbitration award of
18 \$100,000 entered against Respondents and their employee.

19 6. Doolittle also formed and acted as the president of a company called "Monterey Bay
20 Investment Corp." Doolittle, using the name Monterey Bay Investment Corp., obtained an
21 investment adviser certificate from the Commissioner in 1986. The certificate issued to Monterey
22 Bay Investment Corp. was revoked in February 2000 but Doolittle never surrendered it and he
23 continued to operate as an investment adviser using that name and variants of the name including,
24 but not limited to, Monterey Bay Investment Corporation, Monterey Bay Investment Corp.,
25 Monterey Bay Investments, and Monterey Bay Investment, Inc. All of these other entities and
26 fictitious business names used by Doolittle functioned as his alter egos.

27 7. Doolittle routinely sought clients and sought investors' funds by means of advertising.
28 Doolittle offered "free notary services" in the yellow pages and local newspapers. In addition,

1 Doolittle advertised on his Internet websites, which include: <http://recycledhousing.com>,
2 <http://kendoolittle.com>, <http://www.investorsdomain.com>, <http://www.lawyerdomains.com> and
3 <http://www.guntransfers.com>. Some of Doolittle's websites described investment opportunities.

4 8. Doolittle also sought investors through affiliation with religious and military veteran
5 groups and gun owners. Doolittle represents himself to be a devout church member and descendant
6 of General Doolittle from the World War II era. Doolittle sought to exploit the trust and friendship
7 existing among those in various religious and military groups to gain access to investors' funds.
8 Doolittle's clients acquired in this manner were elderly, trusting and unsophisticated individuals.
9 Doolittle's offer of free notary services in his offices provided him with the opportunity to discuss
10 estate and financial planning with potential clients and make recommendations to them. At times
11 Doolittle advised and directed the sale or exchange of a client's stock, mutual funds or other assets to
12 enable a client to purchase other investments and financial products that he sold, which resulted in
13 fees, commissions and compensation being paid to him or his alter egos. Doolittle's
14 recommendations included the sale or exchange of low risk mutual funds, blue chip stock and other
15 investments held by clients with sale proceeds transferred to Doolittle so they would purchase his
16 investments. After Doolittle acquired funds from clients they often had difficulty obtaining
17 documents reflecting their investments with him. Initially clients would receive some profit or
18 return on their investment in the form of monthly interest payments, but Doolittle invariably ceased
19 making payments and offered a variety of excuses or avoided contact with clients.

20 9. Doolittle's discretionary investment advice to California investors and receipt of
21 compensation for these investment advisory services occurred during a time he was unlicensed and
22 not exempt from the certification requirement in section 25230 of the Corporate Securities Law.

23 10. The investments offered by Doolittle include interests in a "mortgage fund" he created.
24 Doolittle explained to investors that he managed a first trust deed mortgage pool in the central coast
25 area. Doolittle offered fractionalized interests in trust deeds secured by real or personal property,
26 including mobile homes, and also offered domain name investments. In all cases Doolittle promised
27 investors profits or interest payments significantly above the market rate, ranging from ten to fifteen
28 percent (10%-15%).

1 11. Doolittle's offers and sales of investment contracts in the form of interests in mortgage
2 pools, fractionalized trust deeds, and domain name investments constitute securities. These
3 securities were required to be but were not qualified under the Corporate Securities Law and are not
4 exempt in violation of Corporations Code section 25110.

5 12. In violation of Corporations Code section 25401 Doolittle failed to disclose to investors
6 the following: (1) the Commissioner revoked his investment advisory certificate and that neither he
7 nor his alter egos possessed a investment adviser certificate from the Commissioner or the SEC
8 authorizing him to conduct business as an investment adviser in California; (2) he was not licensed
9 by the California Department of Housing and Community Development to act as a mobile home
10 dealer and that it had refused to grant him a license to engage in mobile home transactions; (3) the
11 NASD had taken disciplinary action against Respondents; and, (4) that Respondents and/or
12 Doolittle's alter egos were defendants in civil cases resulting in judgments against them including,
13 but not limited to, one that resulted in a judgment of over \$564,700 against Respondents.

14 13. Both before and after the NASD disciplined Doolittle, he formed and managed several
15 entities to facilitate his access, control and appropriation of investors' funds. These entities include,
16 but are not limited to, the following: Monterey Bay Investments, M Homes, Mobile Repo, Inc.,
17 Recycled Mobile Homes and Recycled Housing. These entities and fictitious business names used
18 by Doolittle served as his alter egos.

19 14. From 2000 and continuing thereafter Doolittle was engaged in unlicensed activities as an
20 investment adviser. Doolittle used the above-described entities to pool investors' funds. At all
21 times Doolittle acted as the principal and manager of his entities and thus he or his alter egos
22 directly managed and controlled investors' funds and securities.

23 15. The investors who entrusted funds to Doolittle were unsophisticated and persons of
24 modest means who entrusted their retirement funds to him.

25 16. Investors were led to believe the securities Doolittle purchased were held in qualified
26 custodial IRA accounts or retirement accounts with the Trust Company of America or other firms.
27 In fact, Doolittle arranged for investors' retirement funds deposited with the Trust Company of
28 America to be subsequently transferred to bank accounts he controlled.

1 17. As a registered representative with NASD member firms and as principal of his own
2 firm Doolittle was required to pass qualifying examinations and to conform to the requirements of
3 the Corporate Securities Law, Federal securities law, rules and regulations promulgated by the SEC
4 and the NASD. Doolittle took and passed several examinations and was knowledgeable about the
5 legal requirements governing those who are employed in the securities industry. Doolittle was also
6 required by the NASD to requalify by examination. Doolittle knew that either qualification or an
7 exemption is required to offer and sell securities and that a license is required to engage in non-
8 exempt investment advisory activities.

9 18. Doolittle never disclosed to investors the fact that in 2000 the Commissioner revoked the
10 investment adviser's license issued to Doolittle's other alter ego, Monterey Bay Investment Corp.
11 and that Doolittle failed to surrender this revoked investment adviser's license to the Commissioner
12 in violation of Corporations Code section 25244.

13 19. On October 17, 2005, the Commissioner issued and served Respondents with an Order
14 Imposing Condition on Surrender of Certificates as Broker-Dealer ("Order") pursuant to
15 Corporations Code section 25242, subdivision (a). The Order required the following:

- 16 1. MBS to respond to all the letters(s) of inquiry from the Commissioner;
- 17 2. MBS to make available for review, examination, and investigation by the
18 Commissioner all books and records, including, but not limited to, accounts,
19 correspondence, memoranda, papers, books, and all other records required by
20 the California Corporations Code, section 25241 and California Code of
21 Regulations, sections 260.241 and 260.241.1; and,
- 22 3. MBS to provide the Commissioner with the name of a contact person for the
23 firm, a phone number and an address at which the contact person who will
24 have custody of the firms books and records is located.

25 20. Additionally, the Commissioner required Respondents to provide records of
26 complaints from investors and other persons who transacted business with MBS and to provide
27 statements of all bank and trust accounts relating to MBS.

28 21. Respondents have not complied with the Commissioner's request for information or
with the Order that imposed conditions on the surrender of the broker- dealer certificate issued to
MBS.

1 22. Respondents are obligated to know and comply with the provisions of the Corporate
2 Securities Law found in the Corporations Code and the regulations thereunder. Respondents were
3 required to comply with the Commissioner’s order imposing conditions on surrender. During
4 relevant times Respondents violated the Corporate Securities Law, regulations thereunder, and the
5 Commissioner’s Order that justifies the imposition of penalties and award of ancillary relief.

6 23. Corporations Code section 25252 authorizes the Commissioner to issue an order levying
7 administrative penalties against any broke-dealer for willful violations of any provisions of the
8 Corporate Securities Law and any rules promulgated thereunder. Corporations Code section 25252
9 provides, in relevant part:

10 The Commissioner may, after appropriate notice and opportunity for hearing,
11 by orders, levy administrative penalties as follows: . . .

12 (b) Any broker-dealer or investment adviser that willfully violates
13 any provision of this division to which it is subject, or that willfully
14 violates any rule or order adopted or issued pursuant to this division
15 and to which it is subject, is liable for administrative penalties of not
16 more than five thousand dollars (\$5,000) for the first violation, not
17 more than ten thousand dollars (\$10,000) for the second violation,
18 and not more than fifteen thousand dollars (\$15,000) for each
19 subsequent violation. . . .

20 (d) The administrative penalties available to the commissioner
21 pursuant to this section are not exclusive, and may be sought and
22 employed in any combination with civil, criminal, and other
23 administrative remedies deemed advisable by the commissioner to
24 enforce the provisions of this division.

25 24. Respondent's violated their legal and fiduciary duty to elderly clients including, but not
26 limited to investors, E.N.J, J.L., J.K. and E.H. Respondents obtained funds from these and other
27 elderly clients by means of misrepresentations and omissions of material facts. Respondents’ clients
28 are entitled to relief, including restitution for payment of the broker-dealer commissions and fees
paid to them and other ancillary relief, pursuant to Corporations Code section 25254. Respondents’
clients are also entitled to recover the loss of their principal and to receive interest at the legal rate
and receive compensation for any other damages that occurred because of Respondents’ violations
of the Corporate Securities Law.

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25. Corporations Code section 25254, in pertinent part, states:

(a) If the commissioner determines it is in the public interest, the commissioner may include in any administrative action brought under this part a claim for ancillary relief, including, but not limited to, a claim for restitution or disgorgement or damages on behalf of the persons injured by the act or practice constituting the subject matter of the action, and the administrative law judge shall have jurisdiction to award additional relief.

(b) In an administrative action brought under this part, the commissioner is entitled to recover costs, which in the discretion of the administrative law judge may include an amount representing reasonable attorney's fees and investigative expenses for the services rendered, for deposit into the State Corporations Fund for the use of the Department of Corporations.

26. In summary by reason of the foregoing, Respondents willfully violated the following provisions:

- (a) Corporations Code 25241 by failing to maintain books and records;
- (b) California Code of Regulations, title 10, section 260.241 by failing to make, keep and provide books and records to the Commissioner;
- (c) California Code of Regulations, title 10, section 260.241.1, by failing to preserve records;
- (d) Corporations Code section 25110 by the unqualified sale of securities;
- (e) Corporations Code section 25230 by acting as an unlicensed investment adviser;
- (f) Corporations Code section 25244 by failing to surrender the investment adviser's certificate issued to Monterey Bay Investment Corp.
- (g) Corporations Code section 252401 by misrepresentations and omissions of material fact in connection with the offer and sale of securities.

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PRAYER

WHEREFORE, good cause showing, pursuant to Corporations Code section 25252 the California Corporations Commissioner prays for an Order Levying Administrative Penalties against Respondents, Monterey Bay Securities, Inc. and Kenneth Doolittle, as follows:

1. That pursuant to Corporations Code section 25252 the Commissioner levy administrative penalties in the amount of \$5,000 for each of Respondents' books and records violations including:

- Corporations Code section 25241;
- California Code of Regulations, title 10, section 260.241; and
- California Code of Regulations, title 10, section 260.241.1.

2. That pursuant to Corporations Code section 25252 the Commissioner levy administrative penalties for violation of California Corporations Code section 25110 in the amount of \$5,000 for each of at least four (4) instances and \$5,000 for each additional instance of unqualified sales according to proof.

3. That pursuant to Corporations Code section 25252 the Commissioner levy administrative penalties for violation of Corporations Code section 25230, in the amount of \$5,000 for each of at least four (4) instances and \$5,000 for each additional instance of unlicensed activity according to proof.

4. That pursuant to Corporations Code section 25252 the Commissioner levy administrative penalties for violation of Corporations Code section 25244, in the amount of \$5,000.

5. That pursuant to Corporations Code section 25252 the Commissioner levy administrative penalties for violation of Corporations Code section 25401, in the amount of \$5,000 for each of at least three (4) instances of an untrue statement or omission of material fact.

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WHEREFORE, good cause showing, pursuant to Corporations Code section 25254 the Commissioner hereby prays for an order of ancillary relief against Monterey Bay Securities, Inc. and Kenneth Doolittle consisting of:

- (1) disgorgement of management fees received by Monterey Bay Investment Corp. and Kenneth Doolittle while operating as an unlicensed investment adviser in an amount of at least \$10,000, or more according to proof;
- (2) restitution to clients/investors for the loss of principal in the amount of at least \$200,000, or more according to proof, and interest at the legal rate of and according to proof, during the time Monterey Bay Investment Corp. and Kenneth Doolittle were operating as an unlicensed investment adviser; and
- (3) recovery of costs, investigative expenses and attorney's fees in an amount of at least \$20,000.

Dated: August 9, 2007
San Francisco, California

PRESTON DuFAUCHARD
California Corporations Commissioner

By: _____
JOAN E. KERST
Senior Corporations Counsel