

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

AT RICHMOND, DECEMBER 9, 2013

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2013 DEC -9 P 2:43

COMMONWEALTH OF VIRGINIA, *ex rel.*

STATE CORPORATION COMMISSION

v.

CASE NO. SEC-2013-00023

HERITAGE FINANCIAL SYSTEMS, INC.

and

BRIAN K. LUREEN,

Defendants

AMENDED SETTLEMENT ORDER

The State Corporation Commission's ("Commission") Division of Securities and Retail Franchising ("Division") conducted an investigation of Heritage Financial Systems, Inc. ("Heritage"), and Brian K. Lureen ("Lureen") (collectively, "Defendants") pursuant to § 13.1-518 of the Virginia Securities Act ("Act"), § 13.1-501 *et seq.* of the Code of Virginia ("Code").

Heritage is a broker-dealer registered with the Commission's Division. Heritage is located at 5 Great Valley Parkway, Suite 334, Malvern, Pennsylvania 19355, and does not have an office located in Virginia. Lureen is President and Chief Compliance Officer of Heritage. Lureen is also a registered agent with the Commission's Division.

The Division's investigation and the alleged violations arise from the relationship between the Defendants and Warren Street Partners, LLC ("Warren Street"), a Virginia-based company offering membership interests ("Units") in a private securities offering pursuant to Regulation D, Rule 506 ("Offering").¹ On September 9, 2010, the Defendants entered into a Managing Broker-Dealer Agreement ("MBDA") to act as the managing broker-dealer for the Offering.

During its investigation, the Division determined that the Defendants violated

¹ 17 CFR 230.506 of the Securities and Exchange Act of 1933.

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21 VAC 5-20-280 A (12) (a) of the Commission's Rules Governing Broker-Dealers, Broker-Dealer Agents and Agents of the Issuer, 21 VAC 5-20-10, *et seq.* ("Commission Rules"). Specifically, the Defendants required Warren Street to reimburse it, pursuant to Section 9 of the MBDA, for out-of-pocket expenses incurred in connection to activities relating to the promotion of the Offering. These out-of-pocket expenses included state registration fees and renewals. However, the Defendants charged excessive fees when they charged Warren Street for all 50 state registrations, when, in fact, offers and sales of the Units were made only in five states - Virginia, Tennessee, Pennsylvania, Michigan, and New Hampshire.

In addition, the Division alleges that the Defendants violated Commission Rule 5-20-280 A (12) (a) by charging excessive fees in regard to a second agreement concerning the Offering. On April 6, 2012, Heritage required Warren Street to enter into an Accommodation Agreement ("Agreement") with Heritage's parent company, Heritage Fincorp, Inc. ("Fincorp"). Unlike Heritage, Fincorp is not a registered broker-dealer. The Agreement, however, required Warren Street to pay Fincorp \$7,500 per month for Heritage to provide support services not provided under the MBDA. The Division alleges that the Defendants charged excessive fees in that the Division found the additional support services rendered to Warren Street did not justify the fee.

It is further alleged that the Defendants violated Commission Rule 21 VAC 5-20-280 A (3) when they failed to: (1) have a substantive, pre-existing relationship with at least three of the Warren Street investors in the Offering; and (2) conduct and continue to conduct appropriate due diligence of the Warren Street offering document so that the Defendants could make an appropriate determination that the offering was suitable.

The Division also alleges that the Defendants provided misleading or false information on numerous occasions in violation of § 13.1-502 (2) of the Act. Specifically, the Defendants stated to an investor that \$2.5 million in additional funds were being added, which would bring the total amount raised to \$6 million. The additional contemplated raise never materialized. Furthermore, the Division alleges that the Defendants told an investor that his investment was the subject of a first deed of trust, when the Defendants knew that the land was already encumbered by a bridge loan. Additionally, the Division alleges that the Defendants provided misleading information to investors in the issuer's Supplement #3 issued on September 12, 2012, by failing to disclose: (1) the dire financial status of the company, (2) that no additional equity was raised since May 2012, (3) that the bridge loan was in default, and (4) the actual reason for the change of Managing Member.

In addition, the Division alleges that the Defendants conducted a general solicitation of the Offering. As noted, Warren Street claimed an exemption from registration of its Offering pursuant to Regulation D, Rule 506. In Regulation D, Rule 506, offering issuers are prohibited from making solicitations to the public via mass mailings. The Defendants participated in producing and issuing a letter to hundreds of Virginia Polytechnic and State University alumni during 2012. It is alleged that by such action, the Offering was no longer exempt under federal and state securities law. Thus, it is alleged that the Defendants violated § 13.1-507 of the Act.

Based on the investigation, the Division alleges the Defendants violated: (i) Commission Rule 21 VAC 5-20-280 A (12) (a) by charging unreasonable and inequitable state registration fees and fees for services performed, including miscellaneous services such as collection of moneys due for principal, dividends or interest, exchange or transfer of securities, appraisals, safekeeping, or custody of securities and other services related to its securities business; (ii) Commission Rule

21 VAC 5-20-280 A (3) by recommending to a customer the purchase, sale or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the customer based upon reasonable inquiry concerning the customer's investment objectives, financial situation, risk tolerance and needs, and any other relevant information known by the broker-dealer; (iii) § 13.1-502 (2) of the Act by directly or indirectly obtaining money or property by means of any untrue statement of a material fact or any omission 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; and (iv) § 13.1-507 of the Act by non-willfully failing to comply with Regulation D, Rule 506 and Commission Rule 21 VAC 5-45-20 when the Defendants unintentionally participated in general solicitations via mail distributed by Warren Street as prohibited by Rule 502 (17 CFR 230.502 (c)).

If the provisions of the Act are violated, the Commission is authorized by § 13.1-506 of the Act to revoke a defendant's registration, by § 13.1-519 of the Act to issue temporary or permanent injunctions, by § 13.1-518 A of the Act to impose costs of investigation, by § 13.1-521 A of the Act to impose certain monetary penalties, by § 13.1-521 C of the Act to order a defendant to make rescission and restitution, and by § 12.1-15 of the Code of Virginia to settle matters within its jurisdiction.

The Defendants admit that even though they created and maintained a comprehensive due diligence file and did, in fact, conduct due diligence, they engaged in non-willful conduct that failed to comply with Rule 502 of Regulation D. Defendants also admit to the Commission's jurisdiction and authority to enter this Settlement Order ("Order"). The Defendants, however, neither admit nor deny any of the remaining allegations.

As a proposal to settle all matters arising from these allegations, the Defendants have made an offer of settlement to the Commission wherein the Defendants will abide by and comply with the following terms and undertakings:

(1) Within 180 days of the entry of this Order, the Defendants will pay to the Treasurer of the Commonwealth of Virginia ("Commonwealth") the amount of \$20,000 as a civil penalty for the alleged violations.

(2) The Defendants will pay to the Commonwealth, contemporaneously with the entry of this Order, the amount of \$5,000 to defray the costs of investigation.

(3) Within 180 days of the date of entry of this Order, the Defendants will return a total of \$28,335 in fees previously received from Warren Street to each Warren Street investor in proportion to the amount of his or her investment.

(4) Within 30 days from the date of the final fee payment made to Warren Street investors, the Defendants will provide to the Division an affidavit, executed by the Defendants, attesting that all fees have been paid as well as provide proof thereof (i.e. cancelled check).

(5) The Defendants will not violate the Act in the future.

(6) This Order shall not be construed and is no way intended to serve as a basis for any statutory disqualification.

The Division has recommended that the Commission accept the offer of settlement of the Defendants.

NOW THE COMMISSION, having considered the record herein, the offer of settlement of the Defendants, and the recommendation of the Division, is of the opinion that the Defendants' offer should be accepted.

Accordingly, IT IS ORDERED THAT:

(1) The offer of the Defendants in settlement of the matter set forth herein is hereby accepted.

(2) The Defendants shall fully comply with the aforesaid terms and undertakings of this settlement.

(3) The Commission shall retain jurisdiction in this matter for all purposes, including the institution of a show cause proceeding, or taking such other action it deems appropriate, on account of the Defendants' failure to comply with the terms and undertakings of the settlement.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to:

Brian K. Lureen, President, Heritage Financial Systems, Inc., 5 Great Valley Parkway, Suite 334, Malvern, Pennsylvania 19355; Ian J. Frimet, Esquire, Wexler Burkhart Hirschberg & Unger, LLP, 377 Oak Street, Concourse Level C2, Garden City, New York 11530; and a copy shall be delivered to the Commission's Office of General Counsel and Division of Securities and Retail Franchising.

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STATE CORPORATION COMMISSION

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CASE NO. SEC-2013-00023

HERITAGE FINANCIAL SYSTEMS, INC.
and
BRIAN K. LUREEN,
Defendants

ADMISSION AND CONSENT

Heritage Financial Systems, Inc. and Brian K. Lureen (collectively, "Defendants"), admit to the jurisdiction of the State Corporation Commission ("Commission") as to the party and subject matter hereof and, admitting to the allegation they violated § 13.1-507 of the Act when they failed to comply with the requirements of Regulation D, Rule 506, neither admitting nor denying the remaining allegations made herein by the Division of Securities and Retail Franchising, hereby consent to the form, substance and entry of the foregoing Settlement Order ("Order").

The Defendants further state that no offer, tender, threat or promise of any kind whatsoever has been made by the Commission or any member, subordinate, employee, agent or representative thereof in consideration of the foregoing Order.

Heritage Financial Systems, Inc.

Date: 11/26/2013

By: Brian K. Lureen
Brian K. Lureen, President

Date: 11/26/2013

By: Brian K. Lureen
Brian K. Lureen

Seen and Approved By:

Ian J. Frimet
Ian J. Frimet, Esquire