

Division of Securities
Utah Department of Commerce
160 East 300 South, 2nd Floor
Box 146760
Salt Lake City, UT 84114-6760
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**BEFORE THE DIVISION OF SECURITIES
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH**

<p>IN THE MATTER OF:</p> <p>CLEOBROTHERS & COMPANY LLC, INNOCENT A. NWEZE, JOEL ELLOWITZ,</p> <p style="text-align: center;">Respondents.</p>	<p>STIPULATION AND CONSENT ORDER</p> <p>Docket No. <u>19-0026</u></p> <p>Docket No. <u>19-0027</u></p> <p>Docket No. <u>19-0028</u></p>
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The Utah Division of Securities ("Division"), by and through its Director of Enforcement, Dave Hermansen, and Respondent Joel Ellowitz ("Ellowitz") hereby stipulate and agree as follows:

1. Ellowitz has been the subject of an investigation by the Division into allegations that he violated the Utah Uniform Securities Act ("Act"), Utah Code Ann. §61-1-1 (securities fraud) and §61-1-3 (unlicensed activity) while engaged in the offer and/or sale of securities in or from Utah.
2. On or about July 12, 2019, the Division initiated an administrative action against Cleobrothers & Company, LLC ("Cleobrothers"), Innocent A. Nweze ("Nweze"), and Joel Ellowitz ("Ellowitz") (collectively referred to herein as "Respondents") by filing an Order to Show Cause.
3. Ellowitz hereby agrees to settle this matter with the Division by way of this Stipulation and Consent Order ("Order"). If entered, the Order will fully resolve all claims the Division has against Ellowitz pertaining to the Order to Show Cause.

4. Elowitz admits that the Division has jurisdiction over him and over the subject matter of this action.
5. Elowitz hereby waives any right to a hearing to challenge the Division's evidence and present evidence on his behalf.
6. Elowitz has read this Order, understands its contents, and voluntarily agrees to the entry of the Order as set forth below. No promises or other agreements have been made by the Division, nor by any representative of the Division, to induce Elowitz to enter into this Order, other than as described in this Order.
7. Elowitz is represented by attorney Nathan Evershed from Nelson Jones, PLLC, and is satisfied with the legal representation he has received.

FINDINGS OF FACTS

THE RESPONDENTS

8. Cleobrothers is a Delaware limited liability company registered with the Delaware Division of Corporations on October 21, 2002.¹ On January 16, 2009, Nweze registered Cleobrothers as a foreign limited liability company with the Ohio Secretary of State.² Cleobrothers maintains a website at <http://cleobrothers.com> where Nweze is listed as the founder, Chairman, and Chief Executive Officer of the organization. On the website, Cleobrothers is described as a "U.S. based global biotechnology company focused on researching and developing medical and health care innovations that are dedicated to helping people worldwide live better lives." Cleobrothers claims to market 27 medicine brands through their over-the-counter pharmaceutical portfolio, including the medicine brands Tussin DM and Vicks NyQuil.

¹ Cleobrothers was originally formed as a Delaware limited liability company in October 2002; but the entity's registration was later changed to a corporation on December 16, 2008.

² Cleobrothers's entity documents filed with the Ohio Secretary of State list Nweze as the registered agent with a contact address as 200 East Campusview Blvd., Suite 200, Columbus, OH 43235, and a last known address as 4449 Easton Way, 2nd Floor, Columbus, OH 43219.

9. Cleobrothers also claims to be developing a pregnancy monitoring device called the MLH Vaginal Capsule that can monitor a pregnancy from inside the mother's body and forward the data collected to the physician's cell phone. Cleobrothers has never recorded a securities registration, exemption from registration, or notice filing with the Division.
10. Nweze resided in Ohio during all times relevant to the allegations asserted herein and has never been licensed in the securities industry. Nweze is the founder, president, and registered agent for Cleobrothers, and has sole signatory authority on the Cleobrothers' bank account.
11. Ellowitz resided in Salt Lake County, Utah at all times relevant to the allegations asserted herein, and was last licensed (examination Series 6 and Series 63) in the securities industry in 2006. Ellowitz owned a commercial loan business called Uintah Funding, LLC, and describes himself as a commercial loan broker. Ellowitz was a sales agent for Cleobrothers.

GENERAL ALLEGATIONS

12. The Division's investigation of this matter revealed that from approximately November 2015 to October 2016, while conducting business in or from the state of Utah, Respondents offered and sold at least two investment opportunities to one investor, and raised approximately \$202,940 in connection therewith.
13. The investment opportunities offered and sold by Respondents are investment contracts and/or promissory notes.
14. Investment contracts and promissory notes are securities under §61-1-13 of the Act.
15. In connection with the offer and sale of securities, Respondents, either directly or indirectly, made material omissions and/or misrepresentations of material facts.
16. Ellowitz utilized investor funds in a manner inconsistent with the representations Ellowitz and Nweze made to the investor. For example, investor funds were used to pay personal expenses such as credit card payments, utilities, life insurance, and mortgage payments.
17. To date, the investor is owed at least \$202,940 in principal alone.

INVESTOR INFORMATION

18. From approximately November 2015 to October 2016, Respondents solicited at least one investor to invest in Cleobrothers.³
19. The investor was told his funds would be used to develop a manufacturing facility to begin production for substantial purchase orders customers had already made with Cleobrothers.
20. The investor solicited by Respondents is located in Utah. The solicitations occurred by telephone.
21. The investor had no role in the investment opportunities, other than providing investment funds.

CLEOBROTHERS INVESTMENT

FIRST SOLICITATION

22. In or about February 2015, Nweze contacted Ellowitz to obtain a loan for Cleobrothers to build a manufacturing facility.
23. Ellowitz searched for third party lenders, and discovered Sid Brass ("Brass") in Texas, who ran the Viking Trust hedge fund and was willing to loan Cleobrothers funding if a portion of the loan was paid up-front.
24. To secure the loan with Viking Trust, Ellowitz first solicited investor D.L. in or about October 2015.⁴ D.L. is Ellowitz's ex-brother in law.
25. During the solicitation, Ellowitz made numerous statements to D.L. regarding the investment opportunity in Cleobrothers, including, but not limited to, the following:
 - a. That Cleobrothers needed to build a manufacturing facility to produce products for outstanding orders;
 - b. That D.L.'s investment would be used to secure a loan from a hedge fund to build Cleobrothers' manufacturing facility;

³ Several other investors were uncovered during the Division's investigation; however, those investors are not included in the Division's administrative proceedings based upon a lack of cooperation and/or jurisdiction.

⁴ Other investors from Texas were also solicited, but are not included in the Division's administrative proceeding.

- c. That D.L. would receive a 200% return on his investment and 100,000 shares of Cleobrothers stock in exchange for his initial \$7,000 investment; and
 - d. That Elowitz had vetted Cleobrothers and it was a good investment.
26. Based upon Elowitz's statements, D.L. invested \$7,000 in Cleobrothers by cashier's check made payable to Elowitz on or about November 14, 2015. The cashier's check was deposited into Elowitz's America First Credit Union account ending in -2516, located in Salt Lake County, Utah.
27. The loan from Viking Trust was never executed.

FRAUDULENT CONDUCT: USE OF INVESTOR FUNDS

28. An analysis of Elowitz's bank records revealed that Elowitz used D.L.'s \$7,000 investment in a manner inconsistent with what Elowitz represented at the time of solicitation.
29. Elowitz used D.L.'s investment in a manner including, but not limited to the following:
- a. To pay approximately \$1,869.99 in credit card payments to American Express and Chase;
 - b. To pay approximately \$1,261.21 for life insurance, dental insurance, utilities, and mortgage payments; and
 - c. To take several cash withdrawals of approximately \$3,868.80 without producing receipts or other supporting documents to account for a legitimate business purpose for the cash withdrawals.
30. Elowitz spent D.L.'s \$7,000 investment within five days of receipt of funds.

SECOND SOLICITATION

31. In or about September 2016, Elowitz again attempted to secure a loan for Cleobrothers.
32. Elowitz discovered a new third-party lender, Michael Chery ("Chery") of TW International/Chevalier Capital Funding Consultants, LLC ("TW"). Chery and TW were the acting brokers for Gordon Clark ("Clark") of AMR Investment Advisors, Ltd. ("AMR").
33. To secure a new loan for Cleobrothers, AMR required an initial \$400,000 payment to

- conduct due-diligence before TW would agree to provide Cleobrothers with a \$20 million loan.
34. Elowitz and Nweze approached D.L. to invest again in Cleobrothers to secure a loan to build a manufacturing facility to fill large, outstanding customer orders.⁵
 35. Since D.L. did not have additional funds to invest in Cleobrothers, Elowitz referred D.L. to Faye Pake ("Pake"),⁶ who advised D.L. how to obtain several loans from different institutions to make a \$200,000 investment in Cleobrothers.
 36. To borrow \$200,000, D.L. was required to pay an additional \$24,000 fee to Pake for her consulting services, which Nweze agreed to pay on behalf of D.L.⁷
 37. During the solicitation, Respondents made numerous statements to D.L. regarding the investment opportunity in Cleobrothers, including, but not limited to, the following:
 - a. That D.L.'s investment would be used to secure a loan from TW to build Cleobrothers' manufacturing facility to fill outstanding customer orders;
 - b. That D.L. would still receive the terms of his first investment, plus interest of \$100,000, and an additional 500,000 shares of Cleobrothers stock in exchange for his additional investment of \$200,000;
 - c. That Viking Trust was responsible for the first loan to Cleobrothers failing and losing D.L.'s initial \$7,000 investment;
 - d. That if D.L. borrowed \$200,000, Nweze would pay the \$24,000 loan fee to Pake;
 - e. That as of the September 30, 2014 Balance Sheet, Cleobrothers had a collateral and asset

⁵ Respondents also solicited another investor located in Texas to secure a new loan with TW; however, the investor is not included in the Division's administrative proceedings.

⁶ According to Pake's LinkedIn account, Pake is the Executive Director of a company called The Funding Group in the Jacksonville, FL area; and describes herself as a "start-up funding specialist", provider of small business loans, and provider of short-term cash loans.

⁷ An analysis of Cleobrothers' bank records revealed that Nweze used funds from a previous investor to pay D.L.'s \$24,000 fee to Pake.

value of \$56.5 million;

- f. That Cleobrothers had more than 80 personal skin care products in their cosmetic portfolio and outstanding order agreements to sell the products; and
 - g. That Cleobrothers had a PGC Solutions Ltd. ("PGC") purchase order of more than \$10.6 million.
38. Based upon Respondents statements, D.L. invested \$195,940 on or about October 11, 2016 by wire to Cleobrothers.
39. On or about October 11, 2016, Nweze wired \$200,000 to TW; however, the loan from TW was never executed.
40. During the Division's interview with Nweze, Nweze acknowledged that, *"I will... I will pay him. I will pay him even more. I will... I will... I will do everything in my life to pay it back... back that money [...] It is me that owes... owes [D.L.] money."*

INVESTMENT AGREEMENT

41. In exchange for D.L.'s second investment in Cleobrothers, Nweze gave D.L. an unsigned document entitled, "3rd Amendment To Loan Agreement".
42. The terms of the agreement provided that Cleobrothers would pay D.L. a 100% return of his principal investment, 50% interest on \$200,000 (totaling \$100,000), and increase D.L.'s equity position in Cleobrothers by 500,000 shares.
43. The agreement also re-affirmed the terms of D.L.'s previous investment of \$7,000 to include a 200% return (totaling \$14,000) and 100,000 shares of stock in Cleobrothers.

MISSTATEMENTS AND OMISSIONS

44. In connection with the offer and/or sale of securities, Respondents made the following material misstatements to D.L. including, but not limited to, the following:
- a. That D.L.'s first investment of \$7,000 would be used to secure a loan with Viking Trust to build a manufacturing facility for Cleobrothers, when in fact, this claim was false and

- Elowitz instead used D.L.'s \$7,000 investment on personal expenses, such as credit card, utility, insurance, and mortgage payments;
- b. That D.L. would receive a 200% return on his first investment, \$100,000 in interest on his second investment, and 600,000 shares of Cleobrothers' stock, when in fact, there was no reasonable basis to make these claims;
 - c. That Cleobrothers had more than 80 personal skin care products in their cosmetic portfolio with outstanding order agreements to sell the products, when in fact, this claim is false;
 - d. That Cleobrothers had a PGC purchase order of more than \$10.6 million, when in fact, the purchase order was for \$7.6 million and expired 90 days past August 30, 2014, over a year prior to D.L.'s investments in Cleobrothers; and
 - e. That as of September 30, 2014, Cleobrothers had a collateral and asset value of \$56.5 million, when in fact, there was no reasonable basis to make this claim, and Nweze had arbitrarily selected values for line items such as intellectual property value (\$29.5 million) and 80 product offerings (\$20 million), significantly over-inflating Cleobrothers' collateral and asset value.
45. In connection with the offer and/or sale of securities, Respondents failed to disclose material information to D.L. including, but not limited to, the following:
- a. That Elowitz would use D.L.'s \$7,000 investment for personal expenses;
 - b. That Elowitz signed a broker fee agreement with Nweze promising Elowitz 2% of the loan amount secured to build Cleobrothers' manufacturing facility;
 - c. That Nweze would use a previous investor's funds to pay D.L.'s \$24,000 loan fee;
 - d. That Respondents were not licensed to sell securities; and
 - e. Some or all of the information typically provided in an offering circular or prospectus concerning Respondents relevant to the investment opportunity, such as:
 - i. Business and operating history;
 - ii. Financial statements;

- iii. Information regarding principles involved in the company;
 - iv. Conflicts of interest;
 - v. Risk factors;
 - vi. Suitability factors for investment; and
 - vii. Whether the securities offered were registered in the state of Utah.
46. To date, D.L. is owed at least \$202,940 in principal alone on his investments in Cleobrothers.

ELLOWITZ'S PARALLEL CRIMINAL PROCEEDING

47. On October 16, 2019, Elowitz was charged with Securities Fraud and Unregistered Securities Agent in a parallel criminal action in Utah's Third District Court, Salt Lake County, Utah, Case Number 191910354 (the "Criminal Action").
48. On May 21, 2021, Elowitz entered into a plea agreement with the state, and agreed to a plea in abeyance for 36 months for Securities Fraud, a 2nd degree felony.
49. In the Criminal Action, Elowitz was ordered by the court to pay restitution to investor D.L. of \$19,000 (plus interest) within 36 months. Elowitz was ordered to pay \$5,000 in restitution within 30 days of the court order, and to pay at least \$2,400 every six (6) months thereafter until restitution is paid in full.
50. The court also ordered that Elowitz not act in a fiduciary capacity during the abeyance period.

CONCLUSIONS OF LAW

Securities Fraud under § 61-1-1(2) of the Act

51. Based upon the Division's investigative findings, the Division concludes that the investment opportunity offered and sold by Elowitz is an investment contract and/or a promissory note, which are securities under §61-1-13 of the Act.
52. In violation of § 61-1-1(2) of the Act, and in connection with the offer and/or sale of a security, Elowitz, directly or indirectly misrepresented material facts, as described above.
53. In violation of § 61-1-1(2) of the Act, and in connection with the offer and/or sale of a security,

Elowitz omitted material facts which were necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, as described above.

Securities Fraud under § 61-1-1(3) of the Act

54. In violation of § 61-1-1(3) of the Act, and in connection with the offer and/or sale of a security, Elowitz directly or indirectly engaged in an act, practice, or course of business which operated as a fraud or deceit on investors when he misused D.L.'s funds. That conduct includes but is not limited to the conversion and misuse of D.L.'s funds for purposes not disclosed to or authorized by D.L., including Elowitz's personal use of the investor's funds.

Unlicensed Activity under § 61-1-3(1) of the Act

55. In violation of § 61-1-3(1) of the Act, Elowitz was not licensed in the securities industry in any capacity when he offered and sold securities on behalf of Cleobrothers to D.L., and received compensation in connection therewith.

REMEDIAL ACTIONS/SANCTIONS

56. Elowitz admits to the Division's Findings of Fact and Conclusions of Law, and consents to the below sanctions being imposed by the Division.
57. Elowitz represents that the information he has provided to the Division as part of its investigation is accurate and complete.
58. Elowitz agrees to cease and desist from violating the Act and to comply with the requirements of the Act in all future business in the state of Utah.
59. Elowitz agrees to be barred from associating with any broker-dealer or investment adviser licensed in Utah; from acting as an agent for any issuer soliciting investor funds in the state of Utah; and from being licensed in any capacity in the securities industry in Utah.
60. Pursuant to Utah Code Ann. §61-1-20, and in consideration of the factors set forth in Utah Code Ann. §61-1-31, the Division imposes a total fine amount of \$15,000 against Elowitz. Elowitz will pay the Division \$6,000 of the fine amount within 30 days following entry of this Order. If

Elowitz timely pays restitution in the amount of \$19,000 (plus interest) pursuant to the Criminal Action within three (3) years following entry of this Order, the Division will waive \$7,500 of the fine amount. Elowitz will pay the remaining fine amount of \$1,500 to the Division within 30 days after the three year period has expired.

FINAL RESOLUTION

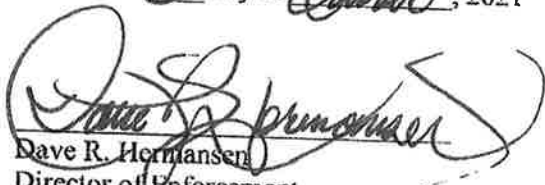
61. Elowitz acknowledges that this Order, upon approval by the Utah Securities Commission ("Commission"), shall be the final compromise and settlement of this matter. Elowitz acknowledges that the Commission is not required to approve this Order, in which case the Order shall be null and void and have no force or effect. In the event the Commission does not approve this Order, however, Elowitz expressly waives any claims of bias or prejudgment of the Commission, and such waiver shall survive any nullification.
62. If Elowitz materially violates any term of this Order, after notice and an opportunity to be heard before an administrative judge solely as to the issue of a material violation, Elowitz consents to entry of an order in which the total fine amount becomes immediately due and payable. Notice of the violation will be provided to Elowitz at his last known address, and to his counsel if he has one. If Elowitz fails to request a hearing within ten (10) days following the notice, there will be no hearing and the order granting relief will be entered.

In addition, the Division may institute judicial proceedings against Elowitz in any court of competent jurisdiction and take any other action authorized by the Act or under any other applicable law to collect monies owed by Elowitz or to otherwise enforce the terms of this Order. Elowitz further agrees to be liable for all reasonable attorneys' fees and costs associated with any collection efforts pursued by the Division, plus the judgment rate of interest.
63. Elowitz acknowledges that the Order does not affect any civil or arbitration causes of action that third-parties may have against him arising in whole or in part from his actions, and that the Order does not affect any criminal causes of action that may arise as a result of the conduct referenced herein. Elowitz also acknowledges that any civil, criminal, arbitration or other causes of actions

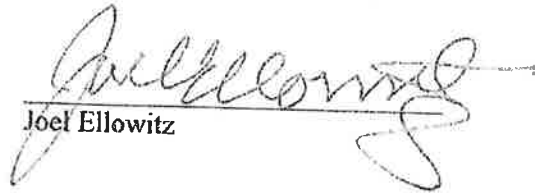
brought by third-parties against him have no effect on, and do not bar this administrative action by the Division against him.

64. This Order constitutes the entire agreement between the parties herein and supersedes and cancels any and all prior negotiations, representations, understandings, or agreements between the parties. There are no verbal agreements which modify, interpret, construe, or otherwise affect this Order in any way. Upon entry of the Order, any further scheduled hearings involving Respondent Ellowitz are canceled. The Order may be docketed in a court of competent jurisdiction.


Dated this 5th day of October, 2021


Dave R. Hermansen
Director of Enforcement
Utah Division of Securities

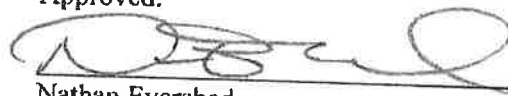
Dated this 17 day of August, 2021


Joel Ellowitz

Approved:


Jennifer Korb
Assistant Attorney General
Counsel for Division

Approved:


Nathan Evershed
Counsel for Respondent Ellowitz

ORDER

IT IS HEREBY ORDERED THAT:


1. The Division's Findings and Conclusions, which Ellowitz admits, are hereby entered.
2. Ellowitz shall cease and desist from violating the Act and comply with the requirements of the Act in all future business in the state of Utah.
3. Ellowitz shall be barred from associating with any broker-dealer or investment adviser licensed in Utah; from acting as an agent for any issuer soliciting investor funds in the state of Utah; and from being licensed in any capacity in the securities industry in Utah.
4. Pursuant to Utah Code Ann. §61-1-20, and in consideration of the factors set forth in Utah Code Ann. §61-1-31, Ellowitz shall pay a fine of \$15,000 to the Division pursuant to the terms set forth in paragraph 60.

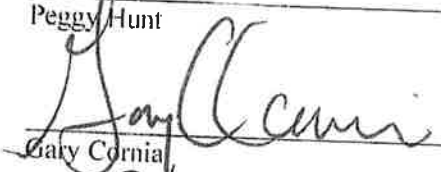
BY THE UTAH SECURITIES COMMISSION:

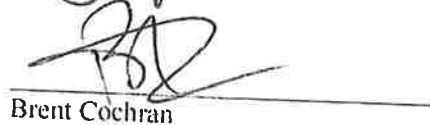
DATED this 14 day of October, 2021


Lyndon L. Ricks


Lyle White (Oct 15, 2021 07:52 PDT)
Lyle White


Peggy Hunt (Oct 14, 2021 11:26 MDT)
Peggy Hunt


Gary Cornia


Brent Cochran

CERTIFICATE OF SERVICE

I certify that on the 15 day of October 2021, I mailed and emailed a true and correct copy of the Stipulation and Consent Order to:

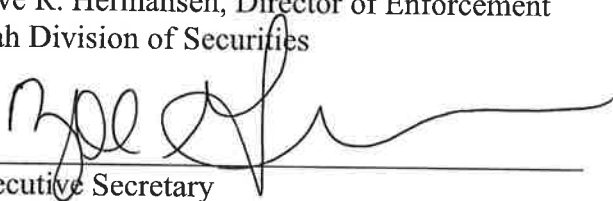
Nathan Evershed (Attorney for Ellowitz)
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Joel Ellowitz
5014 Columbine St.
El Paso, TX 79922

And hand-delivered via drop box to:
Bruce Dibb, Administrative Law Judge
Department of Commerce

Jennifer Korb, Assistant Attorney General
Utah Attorney General's Office

Dave R. Hermansen, Director of Enforcement
Utah Division of Securities



Executive Secretary