

STATE AUDITOR'S OFFICE
SECURITIES DEPARTMENT
HELENA, MONTANA

IN THE MATTER OF) Case No : 01-21-04-123 I
JOHN DAVID FOX, KATHERINE A FOX,) CEASE AND DESIST ORDER
MBIA ASSOCIATES and their agents and)
representatives,)
Respondents.)

The Montana Securities Commissioner (Commissioner), pursuant to the authority of the Securities Act of Montana, Section 30-10-101, et seq., Montana Code Annotated [hereinafter cited as MCA], and Section 30-10-305, MCA, hereby issues the following allegations of fact, proposed conclusions of law, order and notice of right to a public hearing:

ALLEGATIONS OF FACT

1. Respondent MBLA Associates' (referred to hereinafter as "MBLA") program is a sales plan, operation, investment contract or investment program originating from Montana that in the course of conducting its business offers securities to participants in the form of investment contracts. Respondents John David Fox (hereinafter referred to as "John") and Katherine A. Fox (hereinafter referred to as "Katherine") solicited other private individuals to join MBLA and to purchase said investment contracts. Respondents failed to register said sales contracts as securities with the Securities Department of the Montana State Auditor's Office.

2. John and Katherine are participants in the sales plan, operation, investment contract or investment program, and have solicited other private individuals to join the sales plan, operation, investment contract or investment program from their residence located at U.S.

1 Highway 89 South #16, Livingston, Montana 59047 Neither John nor Katherine are registered
2 as a salesperson with the Securities Department of the Montana State Auditor's Office

3 3. John's and Katherine's actions constitute the offer and sale of securities in that
4 they solicit others to pay them \$10.00 for the right to receive compensation derived primarily
5 from obtaining the participation of other private individuals in the sales plan, operation,
6 investment contract or investment program. They do this by mailing what they refer to as Shared
7 Benefit Plans to unsolicited individuals throughout the United States and Canada

8 4. John and Katherine promise to pay a total of \$100.00 for an initial investment of
9 \$10.00 to individuals who sign up to participate in the Shared Benefit Program. Participants then
10 receive a Benefits Package, which the participants are required to mail to other individuals such
11 as family members or friends. John and Katherine promise to pay recipients of Benefit Packages
12 a "steadily increasing cash benefit at regular intervals," which John and Katherine state will total
13 earnings up to \$5,115.00.

14 5. Respondents solicit individuals who receive Benefit Packages to purchase
15 additional Benefit Packages for \$10.00 each that they also can provide to family members or
16 friends under the same terms hereinabove described. Respondents further promise to provide an
17 additional Benefit Package to participants for their individual benefit for every four Benefit
18 Packages the participants purchase

19 6. Participants may also purchase Benefit Packages for themselves at a cost of
20 \$10.00 for each package under the same terms hereinabove described. John and Katherine also
21 promise to pay such participants a total of \$100.00 in return for their initial \$10.00 payment

22 7. If any family member or friend refuses to accept and register with MBLA their
23 receipt of the Benefit Package sent to them by a participant, John and Katherine promise
24 participants they will still receive their \$100.00 return regardless of participation of the family
25

1 member or friend, thereby guaranteeing participants a \$100.00 return for their initial \$10 00
2 investment.

3 8 Respondents require participants to provide all payments to MBLA in cash via the
4 U.S. mail system to 1106 W. Park Street, PMB 444, Livingston, MT 59047. The operation does
5 not involve the sale of any goods or services, therefore Respondents' operation constitutes a
6 sales plan or operation in which participants give consideration for the opportunity to receive
7 compensation derived primarily from obtaining the participation of others in the sales plan or
8 operation rather than from the sale of goods or services by the participants or the other persons
9 induced to participate in the sales plan or operation by the participants. Therefore, Respondents'
10 program constitutes an illegal pyramid promotional scheme.

11 9. In conducting and/or offering their sales plans, operations, investment contracts or
12 investment programs, Respondents failed to disclose the following material facts, which facts
13 were necessary to disclose in order to make the statements made about the investment, in light of
14 the circumstances under which they were made, not misleading:

15 a. the market for their sales plans, operations, investment contracts or investment
16 programs will eventually become saturated as the supply of new members declines and
17 individuals recruited at the bottom of the pyramid structure or later in time may be unable to
18 generate promised returns and.

19 b. at all times material hereto, the programs were not registered as securities in the
20 State of Montana.

21 CONCLUSIONS OF LAW

22 1. The Commissioner has jurisdiction over this matter by reason of Respondents'
23 offer and sale of securities to persons in Montana. Section 30-10-107, MCA.

24 2. The Commissioner has jurisdiction over this matter by reason of Respondents'
25 operation of a pyramid promotional scheme in Montana. Section 30-10-107 MCA.

1 3 Respondents' sales plans, operations, investment contracts or investment
2 programs constitute securities within the meaning of the Securities Act of Montana per Section
3 30-10-103(22), MCA.

4 4. Respondents' program is an illegal pyramid promotional scheme within the
5 meaning of the Securities Act of Montana, Section 30-10-324(6), MCA.

6 5. Offer or offer to sell includes "every attempt to offer to dispose of or solicitation
7 of an offer to buy a security or interest in a security for value " Section 30-10-103(15), MCA.

8 6 Respondents are salespersons as defined by the Securities Act of Montana,
9 Section 30-10-103(20), MCA.

10 7 In connection with the above offers of securities to/from persons in Montana.
11 Respondent violated Section 30-10-201(1), MCA, by transacting business as a salesperson in
12 Montana without registering as such.

13 8. In connection with the above offers of securities to/from persons in Montana.
14 Respondents violated Section 30-10-202, MCA, by transacting business in unregistered
15 securities.

16 9 In connection with the above offers of securities to/from persons in Montana.
17 Respondents violated Section 30-10-301(1)(b), MCA, by failing to disclose the following
18 material facts, which facts were necessary to disclose in order to make the statements made about
19 the investment, in light of the circumstances under which they were made, not misleading.

20 a the market for the programs will eventually become saturated as the supply of
21 new members declines and individuals recruited at the bottom of the pyramid structure or later in
22 time may be unable to generate promised returns,

23 b. at all times material hereto, the programs were not registered as securities in the
24 State of Montana.

