

Karen E. Powell
Securities Department
Montana State Auditor's Office
840 Helena Ave, Helena, MT 59601
(406)444-2040

BEFORE THE STATE AUDITOR
AND COMMISSIONER OF SECURITIES
HELENA, MONTANA

IN THE MATTER OF:)	CASE NO. SEC – 2004- 35
)	
SPELLBINDER FUNDING, LLC;)	TEMPORARY CEASE AND DESIST
DENNIS C. HEALEY and)	ORDER AND NOTICE OF PROPOSED
DEREK USINGER; and their agents)	AGENCY ACTION AND
and representatives;)	OPPORTUNITY FOR HEARING
Respondents)	

NOTICE OF PROPOSED AGENCY ACTION

Staff of the Securities Department (Department) of the office of the State Auditor and Commissioner of Securities of the State of Montana (Commissioner), pursuant to the authority of the Securities Code of Montana § 30-10-101, et seq., Montana Code Annotated (2003) (MCA), is proposing to the Commissioner that he take disciplinary action against Spellbinder Funding, LLC, Dennis Healey, and Derek Usinger for violations of the Montana Securities Act. The commissioner has authority to take such action under the provisions of §§ 30-10-107, 3-10-201, 30-10-202, 30-10-304, 30-10-305, 30-10-307 and 30-10-309, MCA. In particular, the staff is recommending disciplinary action against the above-named Respondents including issuing a Cease and Desist Order, imposition of appropriate fines and restitution pursuant to the provisions of the Montana Securities Act.

Service of process is pursuant to § 30-10-107(8), MCA.

REASONS FOR ACTION

There is reason to believe that the following facts will be proven true and, therefore, justify and support immediate issuance of an order requiring Respondents to cease and desist their activity in violation of the Montana Securities Act.

ALLEGATIONS

1. Spellbinder Funding, LLC ("Spellbinder") is a Nevada Limited Liability Corporation located at 2995 S. Jones Blvd., #C, Las Vegas, NV 89146
2. Derek Usinger ("Usinger") is an individual who at all times material hereto has been an agent of Spellbinder.
3. Dennis Healey ("Healey") is an individual who at all times material hereto has been an agent of Spellbinder.
4. In or around January/February, 2004, B.H., a Montana resident, was contacted by telephone by an unknown female who briefly described the offering of Spellbinder securities to B.H., and asked if B.H. was interested. B.H. indicated that he would be interested in obtaining more information, and within days was contacted by telephone by Usinger.
5. Subsequently Respondents offered units of a limited liability interests in Spellbinder to B.H. for \$10,000.
6. Respondents sold units of a limited liability interest in Spellbinder to B.H. for \$10,000 on or around May 6, 2004.
7. The units of limited liability interests in Spellbinder offered and sold by the respondents are Securities as defined by § 30-10-103(22)(a), MCA.
8. It is unlawful for any person to offer or sell a security in this state without registration or proper use of an exemption.
9. On May 21, 2004, Spellbinder, through its general manager Healey, filed paperwork consistent with use of federal exemption Reg.. D Rule 506. Proper use of a

federal exemption would exempt an issuer from complying with Montana registration requirements.

10. Use of a federal exemption pursuant to Reg D. Rule 506, in addition to other requirements, prohibits general solicitation, such as cold-calling (calling persons not in a prior business relationship.)

11. B.H. had no pre-existing relationship with Spellbinder, Usinger or Healey.

12. Usinger is not, nor has been, registered as a salesperson in Montana as required pursuant to § 30-10-201, M.C.A.

13. Healey is not, nor has been, registered as a salesperson in Montana as required pursuant to § 30-10-201, M.C.A.

14. It is a violation of § 30-10-201(2) to employ a salesperson unless the person is properly registered.

15. The offering materials distributed to investors by Spellbinder include "Spellbinder Funding, LLC Revenue and Distributions Projections", showing "Return of Investment in Spellbinder Funding, LLC" of 118.52% the first year; 67.51% the second year; 117.99% the third year; 278.60% the fourth year; and 278.60% the fifth year.

16. Respondents failed to disclose to B.H., at a minimum, that:

(a) The projected returns on the investment of 118.52% the first year; 67.51% the second year; 117.99% the third year; 278.60% the fourth year; and 278.60% the fifth year for a company with no operating history were unsound and unrealistic.

(b) that such investments were not properly registered with the Securities Department of the Montana State Auditor's Office as required by 30-10-202, M.C.A.

(c) At all times material hereto, none of the Respondents were registered as a salesperson with the Securities Department of the Montana State Auditor's Office as required by §30-10-201, M.C.A.

CONCLUSIONS

1. The Commissioner has jurisdiction over this matter by reason of Respondents' offer and sale of securities to persons in Montana. § 30-10-107; 30-10-201, 30-10-301, and 30-10-305, MCA.

2. Investment in units of a limited liability company constitutes an investment contract and is a security pursuant to § 30-10-103(22), MCA.

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

4. Usinger is salesperson pursuant to § 30-10-103(20), MCA.

5. Healey is a salesperson pursuant to § 30-10-103(20), MCA

6. In connection with the above offers of securities to/from persons in Montana, Respondents Healey and Usinger violated § 30-10-201, MCA by transacting business as salespersons in Montana without registration.

7. In connection with the above offer and sale of securities to/from persons in Montana, Respondents violated § 30-10-202, MCA, by transacting business in unregistered securities without the benefit of an exemption.

8. Spellbinder and Healey violated § 30-10-201(2) by employing a salesperson without proper registration.

9. In connection with the above offer and sale of securities to/from persons in Montana, Respondents violated § 30-10-301(1)(b), MCA by failing to disclose, at a minimum, the following material facts, which facts were necessary to disclose in order to

make the statements made about the investment, in light of the circumstances under which they were made, not misleading:

(a) The projected returns on the investment of 118.52% the first year; 67.51% the second year; 117.99% the third year; 278.60% the fourth year; and 278.60% the fifth year for a company with no operating history were unsound and unrealistic.

(b) that such investments were not properly registered with the Securities Department of the Montana State Auditor's Office as required by 30-10-202, M.C.A.

(c) At all times material hereto, none of the Respondents were registered as a salesperson with the Securities Department of the Montana State Auditor's Office as required by §30-10-201, M.C.A.

PUBLIC INTEREST

For any and all of the reasons set forth above, it is in the public interest and will protect Montana investors to:

1. Issue a cease and desist order barring Respondents from further violations of the Act;
2. Order Respondents to pay an administrative fine in an amount and upon such terms and conditions as supported by the evidence and determined at hearing of this matter; and
3. Take such other actions which may be in the public interest and necessary and appropriate for the protection of Montana investors.

RELIEF SOUGHT

1. For violating § 30-10-201, MCA, the agency seeks imposition of a fine against each Respondent for each such violation not to exceed the sum of \$5,000.00 pursuant to § 30-10-305(3), MCA;

2. For violating § 30-10-202, MCA, the agency seeks imposition of a fine against each Respondent for each such violation not to exceed the sum of \$5,000.00 pursuant to § 30-10-305(3), MCA;

3. For violating § 30-10-301, MCA, the agency seeks imposition of a fine against each Respondent for each such violation not to exceed the sum of \$5,000.00 pursuant to § 30-10-305(3), MCA;

4. The agency further seeks reasonable attorney fees and costs, pursuant to § 30-10-309, MCA for violations of the Act as hereinabove described.

STATEMENT OF RIGHTS

You are entitled to a hearing to respond to this notice, present evidence and arguments on all issues involved in this case. You have a right to be represented by an attorney at any and all stages of this proceeding. You may demand a formal hearing before a hearing examiner appointed by the Commissioner pursuant to the Montana Administrative Procedure Act, §§ 2-4-601, MCA, and following, including § 2-4-631, MCA. If you demand a hearing, you will be given notice of the time, place and the nature of the hearing. Pursuant to § 33-1-701(2), MCA, the hearing shall be held within a reasonable time after the Commissioner receives a demand for hearing, unless postponed by mutual consent.

If you want to contest the proposed action under the jurisdiction of the Commissioner, you must advise the Commissioner within fifteen (15) days of the date you received this notice. You must advise the Commissioner of your intent to contest

the proposed action by writing to Karen E. Powell, Legal Counsel, State Auditor's Office, 840 Helena Avenue, Helena, Montana 59601. Your letter to Ms. Powell must clearly indicate whether you demand a hearing, or whether you waive formal proceedings and, if so, what informal proceedings you prefer for disposition of this case. Pursuant to § 2-4-603(2), MCA., you may not request to proceed informally if the action could result in suspension, revocation or any other adverse action against a professional license.

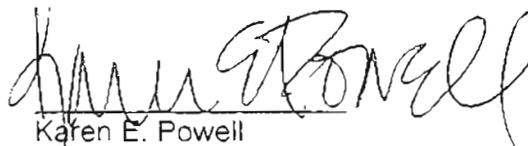
Should you request a hearing, you have the right to be accompanied, represented, and advised by counsel. If the counsel you choose has not been admitted to practice law in the State of Montana, he or she must comply with the requirements of Application of American Smelting and Refining Co., (1973), 164 Mont.139,520 P.2d 103.

POSSIBILITY OF DEFAULT

Failure to give notice or to advise of your demand for a hearing or form of informal procedure within fifteen (15) days will result in the entry of a default order imposing the disciplinary sanctions against you, without further notice to you, pursuant to 6.2.101, Administrative Rules of Montana and the Attorney General's Model Rule 10, 1.3.214.

DATED this 14 day of August 2004.

JOHN MORRISON
State Auditor and
Commissioner of Securities

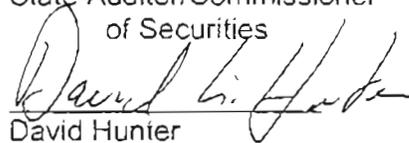
By: 
Karen E. Powell
Legal Counsel

CEASE AND DESIST ORDER

Pursuant to § 30-10-305(1)(a), MCA, it appears to the Commissioner that the above named Respondents have engaged or are about to engage in an act or practice constituting a violation of the Securities Act of Montana and therefore hereby orders Respondents to cease and desist engaging in any act, practice, or course of business that operates or would operate as a fraud or deceit upon any person, in violation of § 30-10-301, MCA, and to cease and desist from offering and selling unregistered securities by unregistered salespersons in violation of § 30-10-201 and § 30-10-202, MCA.

§ 30-10-306(1), MCA, provides that any willful violation of this cease and desist order, upon conviction, may be punished by imprisonment for not more than ten (10) years and/or a fine not exceeding five thousand dollars (\$5,000.00).

JOHN MORRISON
State Auditor/Commissioner
of Securities


David Hunter
Deputy State Auditor

CERTIFICATE OF SERVICE

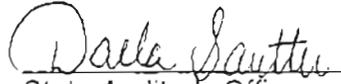
I hereby certify that I mailed a true and correct copy of the foregoing TEMPORARY CEASE AND DESIST ORDER AND NOTICE OF PROPOSED AGENCY ACTION AND OPPORTUNITY FOR HEARING to the following persons by depositing the same in the U.S. Mail, certified, return receipt requested, on this 5 day of Aug. 2004.

TO.

Spellbinder Funding, LLC
2995 S. Jones Blvd., #C, Las Vegas, NV 89146

Dennis C. Healey
9570 W Rosada Way
Las Vegas, NV 89149

Derek Usinger
4550 W. Sahara Avenue
Las Vegas, NV 89102


State Auditor's Office