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**BEFORE THE COMMISSIONER OF SECURITIES AND INSURANCE
MONTANA STATE AUDITOR**

IN THE MATTER OF:)	CASE NO. SEC-2014-119
)	
)	
TBTI, INC.; and PAUL L. SCHUMACK;)	NOTICE OF PROPOSED AGENCY ACTION AND OPPORTUNITY FOR HEARING
)	
Respondents.)	
)	

Staff of the Office of the Commissioner of Securities and Insurance, Montana State Auditor (CSI), pursuant to the authority of the Securities Act of Montana, Mont. Code Ann. § 30-10-101 et seq. (Act), is proposing to the Commissioner of Securities and Insurance, Montana State Auditor (Commissioner), that she take specific action against TBTI, Inc. (TBTI), and Paul L. Schumack (Schumack) (collectively, Respondents) for violations of the Act. The Commissioner has authority to take such action under §§ 30-10-102, 30-10-107, 30-10-201, 30-10-202, 30-10-301, 30-10-304, 30-10-305, and 30-10-309. Service of process is pursuant to § 30-10-107(8).

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REASONS FOR ACTION

There is probable cause to believe that the following facts, if true, justify and support such specific action. Furthermore, there is reason to believe that the following facts will be proven true, and, therefore, justify and support the relief requested.

ALLEGATIONS OF FACT

1. Respondent TBTI, Inc. (TBTI), is a for-profit corporation organized under the laws of the State of Florida since 2001.

2. Respondent Paul L. Schumack (Schumack) was the President of TBTI at its inception, and currently serves as its Vice President/Director.

3. On December 22, 2013, Respondents sold four “Virtual Concierge” machines to Montana resident MW for \$14,000 under a Virtual Concierge Placement Contract and License Agreement (Contract). According to the Contract, “[t]he Virtual Concierge technology system is a patent pending product that will be placed in nationally known hotel franchisees, property management companies and brands.”

4. Under the Contract, MW’s purchase was an “investment” and the four Virtual Concierge machines were part of MW’s “investment portfolio.” Respondents agreed to operate the machines, and pay MW at least \$300 per month for the life of the contract. The initial term of the contract was four years.

5. To date, MW has not received any money from either Respondent.

6. TBTI is not now and has never been registered as a broker-dealer firm with the CSI.

7. Schumack is not now and has never been registered as a securities salesperson with the CSI.

8. The Contract for Virtual Concierge machines has not been registered as a security with the CSI.

CONCLUSIONS OF LAW

1. The Commissioner has jurisdiction over this matter pursuant to § 30-10-101 et seq.
2. A “person” is an individual, a corporation, a partnership, or an association. § 30-10-103(16).
3. Respondents are persons as defined under § 30-10-103(16).
4. An “investment contract” is a “security” under § 30-10-103(22)(a)(xii).
5. Under Montana law, an “investment contract” is “an investment in a common venture premised on a reasonable expectation of profits to be derived from the entrepreneurial or managerial efforts of others.” *State v. Duncan*, 181 Mont. 382, 392-93, 593 P.2d 1026, 1032-33 (1979).
6. The Contract was an “investment contract” under Montana law. *See State v. Redding*, 2012 MT 144A, ¶¶ 23-51, 281 P.3d 189.
7. It is unlawful for a person to transact business in Montana as a broker-dealer or salesperson unless the person is registered with the CSI or subject to an exemption. § 30-10-201(1).
8. Respondents violated § 30-10-201(1) when they sold a security in Montana without being properly registered or subject to a registration exemption.
9. It is unlawful for a person to offer or sell any security in Montana unless the security is registered with the CSI by notification, coordination, or qualification, or subject to an exemption. § 30-10-202.

10. Respondents violated § 30-10-202 when they sold an unregistered security in Montana without the benefit of a registration exemption.

11. It is unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly, into Montana, to:

- a. employ any device, scheme, or artifice, to defraud;
- b. make an untrue statement of a material fact; or
- c. engage in any act, practice, or course of business that operates as a fraud or deceit upon any person. § 30-10-301(1).

12. Respondents violated § 30-10-301(1) when they entered into the Contract and promised to sell four “Virtual Concierge” machines to MW, operate those machines on behalf of MW, and pay MW at least \$300 per month for four years.

RELIEF REQUESTED

WHEREFORE, the CSI seeks the following relief:

1. Pursuant to § 30-10-305, imposition of a fine not to exceed \$5,000 for each identifiable violation of the Act.
2. Pursuant to § 30-10-305, an order directing Respondents to cease and desist from offering, promoting, or operating TBTI or “Virtual Concierge” machines in Montana or using Montana participants.
3. Pursuant to § 30-10-309, restitution for all financial losses incurred by investors in Respondents’ enterprises.
4. Any other relief deemed just and proper.

STATEMENT OF RIGHTS

You are entitled to a hearing to respond to this notice, and to 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 et seq., including § 2-4-631. If you demand a hearing, you will be given notice of the time, place, and the nature of the hearing.

If you wish to contest the proposed action under the jurisdiction of the Commissioner, you must advise the Commissioner within 15 days of the date you receive this notice. You must advise the Commissioner of your intent to contest the proposed action by writing to the Office of the Commissioner of Securities and Insurance, Montana State Auditor, c/o Michael A. Kakuk, 840 Helena Avenue, Helena, Montana 59601. Your letter 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. Should you request a hearing on the matters raised in this Notice, a hearing must be held within a reasonable period of time unless postponed by mutual consent of the parties, pursuant to § 30-10-305.

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, and *Montana Supreme Court Commission on the Unauthorized Practice of Law v. O'Neil*, 2006 MT 284, 334 Mont. 311, 147 P.3d 200.

CONTACT WITH COMMISSIONER'S OFFICE

If you have questions or wish to discuss this matter, please contact Michael A. Kakuk, attorney for the CSI, at 840 Helena Avenue, Helena, MT, 59601, (406) 444-3467. If you retain counsel, please make any contacts with this office through your attorney.

POSSIBILITY OF DEFAULT

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

DATED this 14th day of May, 2014.



MICHAEL A. KAKUK
Attorney for the CSI