

**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;)	TEMPORARY ORDER TO CEASE
)	AND DESIST AND OPPORTUNITY
)	FOR HEARING
)	
Respondents.)	
)	

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., sets forth the following allegations of fact, conclusions of law, order to cease and desist, and notice of right to a hearing:

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 of Securities and Insurance, Montana State Auditor (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.

CEASE AND DESIST ORDER

Pursuant to § 30-10-305, it appears to the CSI that Respondents have engaged, are engaged, or are about to engage in acts or practices constituting violations of the Securities Act of Montana.

Therefore, it is hereby ORDERED that Respondents shall immediately cease and desist from transacting any business in Montana involving securities.

PENALTIES

Pursuant to § 30-10-305, a violation of this Order is a separate violation for which the CSI may impose a fine not to exceed \$5,000 per violation in addition to any other penalties imposed by law.

NOTICE OF RIGHT TO HEARING

You are entitled to a hearing to respond to this Temporary Cease and Desist Order and to present evidence and arguments on all issues involved in this case. If you wish to contest the allegations herein, you must make a written request for a hearing within 15 days of receipt of this Order to the Office of the Commissioner of Securities and Insurance, Montana State Auditor, c/o Michael A. Kakuk, 840 Helena Avenue, Helena, MT 59601. The hearing shall then be held within 20 days of the CSI's receipt of the hearing request, unless the time is extended by agreement of the parties or by order of the hearing examiner. If you do not request a hearing and the CSI orders none, this Order shall become permanent, and the above allegations will be declared the findings of fact and the above conclusions of law will be declared the final conclusions of law.

Should you request a hearing, you have the right to be accompanied, represented, and advised by an attorney. If the attorney you choose has not been admitted to the practice of law in

the state of Montana, she or he must comply with the Montana State Bar for appearing pro hac vice and 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. If you request a hearing, you will be given notice of the date, time, and place of the hearing.

DATED this 14th day of May, 2014.

MONICA J. LINDEEN
Commissioner of Securities and Insurance,
Montana State Auditor

By: 

LYNNE EGAN
Deputy Securities Commissioner