

STATE OF ALABAMA  
ALABAMA SECURITIES COMMISSION

IN THE MATTER OF:

|                    |   |                      |
|--------------------|---|----------------------|
| DBSI, INC          | ) | ADMINISTRATIVE ORDER |
| DOUGLAS L. SWENSON | ) | NO. CD – 2011- 0012  |
| LESLIE M. PAPPAS   | ) |                      |
| MICHAEL MCKENZIE   | ) |                      |
|                    | ) |                      |
| <u>RESPONDENTS</u> | ) |                      |

CEASE AND DESIST ORDER

The Alabama Securities Commission ("Commission"), having authority to administer and provide for the enforcement of all provisions of Title 8, Chapter 6, Code of Alabama 1975, the Alabama Securities Act ("Act"), upon due consideration of the subject matter hereof, and having confirmed information of the offers for sale and/or sale of securities, into, within or from the state of Alabama, has determined as follows:

RESPONDENTS

1. DBSI, INC ("DBSI"), CRD # 11687, is an Idaho based Company with a business address of 12426 W. Explorer Drive, Suite 220, Boise, Idaho. From July 12, 1979, until March 11, 2009, DBSI Securities Corporation was registered with FINRA as a Broker Dealer.

2. DOUGLAS L. SWENSON ("SWENSON"), CRD# 1196632, has a home address of 341 W. Ashbourne, Eagle, Idaho 83616. SWENSON is the owner, manager and operator of DBSI. From August 1, 1979, until May 20, 2005, SWENSON was registered with FINRA as a Securities Agent/Indirect Owner of DBSI.

3. LESLIE PAPPAS ("PAPPAS"), CRD# 1735372, during all times relevant to this order, PAPPAS was a registered real estate agent with Coldwell Bank in California. PAPPAS is not registered with the state of Alabama in any capacity. Currently PAPPAS

is a registered representative with Regent Capital Group, with a business address of 542 20<sup>th</sup> Avenue, North, Indian Rocks Beach, Florida 33785.

4. MICHAEL MCKENZIE, ("MCKENZIE") was an employee of 1031 Equity Advisors of Costa Mesa, CA. MCKENZIE during all times relevant to this order was an agent of DBSI. MCKENZIE had a business address of 3070 Bristol Street, Suite #500, Costa Mesa, CA 92626. MCKENZIE is not registered with the state of Alabama in any capacity.

#### STATEMENT OF FACTS

5. In 2002, the Internal Revenue Service established a rule allowing investors in commercial real estate to sell property and avoid paying income tax, as it pertains to the appreciation, by purchasing another commercial property. This transaction is known as a 1031 exchange, named after the United States Internal Revenue Code (26 U.S.C. 1031) that created it.

6. DBSI created a tenancy in common (TIC). A TIC is a form of real estate ownership in which two or more parties have a fractional interest in a property. For each investor, DBSI created a TIC agreement and a management plan called a "master lease." These property sellers took the proceeds from the sale of their commercial property and invested in a fractional ownership interest in a new property owned by DBSI. By investing the proceeds in another property, the investors avoided paying income tax on the sale of their commercial property. These investors would then own the purchased property along with other tenants in common. DBSI managed the property, leased the property to sub-tenants, collected rent, maintained the property and paid the investors a return on their investment.

7. Agents for DBSI located property for purchase and negotiated the sale while other agents located investors. When investors were located; DBSI purchased the property, formed a limited liability company for each property and sold the investors the property, as tenants in common, at inflated prices. Investors in the TIC program varied in wealth and sophistication and had differing amounts to invest. Investors would

receive an interest in the TIC property in proportion to the size of their investment as it relates to the full price of the property. In some cases the investor would invest in the TIC property and assume a loan from DBSI for the remainder of the amount of their investment.

8. DBSI provided each investor with a Private Placement Memorandum which guaranteed a monthly payment. Investors were also required to sign an Irrevocable Power of Attorney allowing DBSI almost complete authority over the lease, the property and the tenancy in common, including the authority to commit investors to new loan agreements.

9. The agreements between DBSI and the TIC investors, which included the TIC agreement, master lease and the Irrevocable Power of Attorney, created a common enterprise whereby the investor received profits primarily due to the efforts of DBSI. The TIC investor was not expected to expend any effort to obtain the return, other than providing the initial investment funds. The TIC agreements and master lease constituted investment contracts as described in the Act.

10. In April, 2005, PAPPAS, while acting as an agent of DBSI, cold called an Alabama resident. PAPPAS solicited her services involving the sale of property owned by the Alabama resident and investing the proceeds from the sale in a 1031 exchange with DBSI. The property owned by the Alabama investor was located in California.

11. Subsequent to the sale of the California property the Alabama resident invested \$441,536.91, and received a 10.3% tenant in common interest in “, FOR 1031 Lincoln Park 10, LLC,” a property located in Houston, TX. For this TIC investment the Alabama investor received a 6% monthly return.

12. In June, 2007, an Alabama resident contacted MCKENZIE in reference to investing proceeds from the sale of a home in Texas in a 1031 exchange. MCKENZIE suggested and provided documentation on DBSI and a property located in Indiana named, DBSI Goshen Village, LLC.

13. MCKENZIE provided a Purchase Agreement which states that the Alabama investor, “agrees to purchase a 2.3% undivided tenant in common interest in the property at a purchase price equal to \$256,202.52. Of this amount \$110,000.00 would be paid in cash into escrow and \$146,202.53 would be a pro rata share of the loan.”

14. On June 25, 2007, the Alabama resident received \$110,000.00 from the sale of a home and utilized the funds to invest in DBSI Goshen Village through MCKENZIE. The Alabama resident was to receive a return of 6% on the investment.

15. On September 30, 2009, a review of the Alabama Securities Commission registration files disclosed no record of registration for DBSI, SWENSON, PAPPAS or MCKENZIE as a Dealer, Agent, Investment Advisor, or Investment Advisor Representative in the state of Alabama.

#### CONCLUSIONS OF LAW

16. Pursuant to Section 8-6-2(10) Code of Alabama 1975, the definition of a security includes any note, stock or evidence of indebtedness. The agreements involving DBSI, SWENSON and the investors constitute “investment contracts” and therefore are considered securities under the Act.

17. Pursuant to Section 8-6-2(2) Code of Alabama 1975, the definition of “agent” includes any individual who represents a dealer or an issuer in effecting or attempting to effect sale of securities. By soliciting and effecting the sale of securities, to wit: investment contracts. PAPPAS and MCKENZIE represented themselves as agents of DBSI under the Act.

18. Pursuant to Section 8-6-3(a), Code of Alabama 1975, it is unlawful for any person to transact business in this state as a Dealer or Agent for securities unless he is registered under the Act. RESPONDENTS acting as Agents of DBSI effected sales of securities to wit: investment contracts, in the state of Alabama while not being registered with the Commission in violation of the Act.

19. Pursuant to Section 8-6-4, Code of Alabama 1975 states: it is unlawful for any person to offer or sell any security in this state unless it is registered under the Act; the security is exempt from registration under Section 8-6-10; or the transaction is exempt under Section 8-6-11. The securities offered and sold by the Respondents were neither registered nor exempt from registration in Alabama in violation of the Act.

This Order is appropriate in the public interest for the protection of investors and is consistent with the purposes of the Alabama Securities Act.

This Order does not prevent the Commission from seeking such other civil or criminal remedies that are available to it under the Alabama Securities Act.

Additionally, if the allegations set forth herein are found to be true, through administrative adjudication, failure of the RESPONDENTS to make a timely request for hearing, or default of the RESPONDENTS, it is the intention of the Commission to impose sanctions upon the RESPONDENTS. Such sanctions may include, inter alia, an administrative assessment imposed on RESPONDENTS, an additional administrative assessment for investigative costs arising from the investigation of the violation(s) described herein against RESPONDENTS, and a permanent order to bar RESPONDENTS from participation in any securities related industry in the state of ALABAMA.

**ACCORDINGLY, IT IS HEREBY ORDERED** that RESPONDENTS immediately **CEASE AND DESIST** from further offers or sales of any security into, within or from the State of Alabama.

Entered at Montgomery, Alabama, this 11th day of May, 2011.



ALABAMA SECURITIES COMMISSION  
401 Adams Avenue, Suite 280  
Montgomery, AL 36104  
(334) 242-2984

BY:

A handwritten signature in blue ink, appearing to read "Joseph P. Borg", is written over the printed name. The signature is stylized with loops and a long, sweeping underline that extends to the left and then curves back up to cross the name.

JOSEPH P. BORG

Director