STATE OF OREGON
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
DIVISION OF FINANCIAL REGULATION

In the Matter of: JESSE A. MILICH, an individual, Respondent.	Case No. S-21-0067 ORDERS TO CEASE AND DESIST, DENYING USE OF EXEMPTIONS, AND ASSESSING CIVIL PENALTIES, ENTERED BY DEFAULT

On June 2, 2022, the Director of the Department of Consumer and Business Services for the State of Oregon ("Director"), acting by and through the Division of Financial Regulation ("Division") and in accordance with Oregon Revised Statutes ("ORS") 59.005 to 59.451, 59.991 and 59.995 ("the Oregon Securities Law"), served an Order to Cease and Desist, Proposed Order imposing Civil Penalties, and Notice of Right to an Administrative Hearing ("Notice") on Respondent Jesse Milich ("Milich").

The Notice offered Milich an opportunity for a hearing if requested within 20 days of the Notice. The Notice further informed Milich that if a hearing were not conducted because Milich did not timely request a hearing or otherwise defaulted, then the designated portion of the Division's file and all materials submitted by Milich in this case would automatically become part of the contested case record for the purpose of proving a prima facie case.

The Director did not receive from Milich a request for a hearing and did not conduct a hearing.

The Director finds that the record of this proceeding proves a prima facie case.

Now, therefore, after considering the relevant portions of the Division's file relating

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to this matter, the Director finds and orders as follows.

FINDINGS OF FACT

The Director FINDS that:

1. Milich was the organizer of a company named FiberMount, Inc. (FiberMount). Milich registered FiberMount with the Oregon Secretary of State's office in March of 2017. FiberMount's business address of record was 3855 Cascadia Canyon Ave SE, #120 Salem, OR 97302.

2. In the materials FiberMount used to solicit investment, FiberMount marketed itself as a manufacturer of an "entire line of Genuine Fiber Cement Siding Accessories" and as the manufacturer and seller of "the only 2x2x12' Fiber Cement Inside Corner." FiberMount assured investors that they were "certain of a year one profit"—giving a "conservative estimate" of year-one profitability of $2 million dollars, rising "rapidly to a 25 million dollar per year revenue with 50% profitability."

3. At the time Milich registered Fibermount, Milich was an employee of Portland Products Group, Inc (PPG). Like FiberMount, PPG was engaged in the business of manufacturing and retailing fiber cement siding accessories. Milich was hired by PPG in December of 2016 as sales manager for the company.

4. As a condition of his hiring as sales manager for PPG, Milich signed a noncompete agreement forbidding Milich from "utilizing proprietary and confidential information and knowledge gained in his capacity as Sales Manager for PPG to the detriment of PPG and its business endeavors/goals."

5. In April of 2017, Milich solicited investment in FiberMount from a Washington resident who will be identified for purposes of this Order as CM. CM works in the construction industry and did not have previous experience investing in start-up companies.

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6. Milich offered to sell stock in FiberMount to CM at $100 per share. CM understood that the return on his investment would take two forms: (1) increase in the value of the stock, which could be realized by selling the stock at a later date; and (2) dividends paid from the profits of FiberMount.

7. Following his meeting with Milich in April of 2017, CM purchased 500 shares of FiberMount stock, at a total cost of $50,000. Between May of 2017 and August of 2017, CM purchased a further 700 shares, at a slightly discounted cost per share. In total, CM purchased 1,200 shares of FiberMount stock and made a total investment of $90,000.

8. Milich did not disclose Milich's relationship with PPG and noncompete agreement at the time Milich solicited CM to invest in FiberMount. Moreover, the materials used by Milich to solicit investors in FiberMount do not mention Milich's relationship with and obligations to PPG.

9. Milich also did not disclose to CM that Milich had declared bankruptcy in 2006 as a result of the failure of a business Milich had previously owned and managed. Similarly, the materials used by Milich to solicit investors in FiberMount do not mention Milich's past business and bankruptcy.

10. CM, and other investors in FiberMount, were made to sign a document entitled "Subscription Agreement." The Subscription Agreement identified Milich and two other individuals, identified for purposes of this Order as RW and SO, as the directors of FiberMount. Milich signed the Subscription Agreement as president of FiberMount on April 7, 2017. This Subscription agreement was still being used by FiberMount at least as late as July 31, 2017.

11. In the Subscription Agreement, Milich represented that Fibermount had taken "all corporate action * * * necessary for the authorization issuance, (or reservation for issuance), sale, and delivery" of the shares of FiberMount stock.

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12. The Subscription Agreement includes a section entitled "Schedule A: Schedule of Purchasers" ("Schedule of Purchasers"). The Schedule of Purchasers includes a list of 11 individuals (including Milich and CM), alongside the number of shares owned by each individual and the "Total Purchase Price" that each individual purportedly paid for their shares.

13. In the Subscription Agreement Milich further represented that there was no "action, suit, proceeding, or investigation" currently pending or—to FiberMount and Milich's knowledge—being threatened against FiberMount.

14. In actual fact, the shares of FiberMount stock sold by Milich were never registered with the Department of Consumer and Business Services, nor was the notice and fee required under ORS 59.049 (1)-(3) ever filed with respect to the shares of FiberMount stock.

15. Moreover, only two of the individuals listed in the "Schedule of Purchasers" had actually paid cash for their shares—CM and one other individual. The other 9 individuals listed on the "Schedule of Purchasers"—including Milich—had received their shares as "sweat equity" in lieu of other compensation for services purportedly performed on behalf of FiberMount. Milich did not inform CM of this fact when Milich solicited CM to invest in FiberMount.

16. In July of 2017, PPG initiated an action against FiberMount and against Milich personally, seeking to enforce the terms of Milich's noncompete agreement among other remedies. CM did not learn of this litigation until early 2018, when Milich contacted CM seeking a loan to finance the ongoing litigation.

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CONCLUSIONS OF LAW

The Director CONCLUDES the following:

Sale of Unregistered Securities

17. Pursuant to ORS 59.055 (1), no person may "offer or sell any security in this state" unless the security is either (a) registered under the Oregon Securities Act; (b) specifically exempted from registration requirements; or (c) a "federal covered security" for which notice has been filed and fees have been paid pursuant to the Oregon Securities Act.

18. Milich violated ORS 59.055 (1)(a) by selling unregistered shares of stock in FiberMount to CM.

Fraud in Sales of Securities

19. Pursuant to ORS 59.135 (2), "[i]t is unlawful for any person, directly or indirectly, in connection with the purchase or sale of any security * * * To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading."

20. Milich violated ORS 59.135 (2) in five instances as follows:

A. By failing to disclose Milich's relationship with PPG and the existence of Milich's noncompete agreement with PPG when Milich solicited CM to purchase the FiberMount stock;

B. By failing to disclose Milich's 2006 bankruptcy to CM when Milich solicited CM to purchase the FiberMount stock;

C. By representing in the Subscription Agreement that all corporate actions necessary for the "issuance, (or reservation for issuance), sale, and delivery" of the FiberMount stock had been taken, when in fact the FiberMount stock was neither registered with the Division not exempt from the registration requirement;

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D. By omitting to disclose that only two of the "purchasers" listed in the Schedule of Purchasers had actually purchased shares of FiberMount stock; and

E. By representing in the Subscription Agreement that Milich and FiberMount did not know of any impending litigation.

Cease and Desist Authority

21. Pursuant to ORS 59.245 (4), the Director may issue a Cease and Desist order when the Director "has reason to believe that any person has engaged, is engaging or is about to engage in any violation of the Oregon Securities Law."

Authority to Deny Use of Exemptions

22. Pursuant to ORS 59.045 (2), the Director may issue an Order denying, withdrawing, or conditioning the use by any person of the exemptions to registration found at ORS 59.025 and ORS 59.035 if the Director "has reason to believe that the person has engaged in or is about to engage in an act or practice constituting a violation of the Oregon Securities Law or that the use of any exemption by that person would work a fraud or imposition on purchasers."

Civil Penalties Authority

23. Pursuant to ORS 59.995 (1)(a), the Director may impose a civil penalty "of not more than $20,000 for every violation" in addition to any other penalties provided for by law against "any person who violates or who procures, aids or abets" a violation of the Oregon Securities Law.

ORDERS

Now therefore, the Director issues the following Orders:

Cease and Desist

24. Pursuant to ORS 59.245 (4), the Director ORDERS Milich to Cease and Desist from violating ORS 59.055 (1) and ORS 59.135 (2).

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Denial of Exemptions

25. As authorized by ORS 59.045(2), the Director ORDERS that Milich be DENIED the use of securities and transaction exemptions that would otherwise be available to him under ORS 59.025 and ORS 59.035.

Civil Penalty

26. Pursuant to ORS 59.255 (4)(a) and ORS 59.995 (1)(a), the Director ORDERS that Milich be assessed a CIVIL PENALTY in the amount of $120,000, allocated as follows:

A. $20,000 for violating ORS 59.115 (1)(a) by selling unregistered shares of FiberMount stock to CM; and

B. $100,000 for violating ORS 59.135 (2) in five instances ($20,000 each), as further described in Paragraph 20 above.

FINAL ORDER

27. This Order is a "Final Order" under ORS 183.310(6)(b). Subject to that provision, the entry of this Order does not limit other remedies that are available to the Director under Oregon law.

SO ORDERED this 28th day of June, 2022.

Andrew R. Stolfi, Director
Department of Consumer and Business Services

s/ Dorothy Bean
Dorothy Bean, Chief of Enforcement
Division of Financial Regulation

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NOTICE OF RIGHT TO JUDICIAL APPEAL

Judicial review of final orders in contested cases is governed by ORS 183.482. Milich may request judicial review by filing a petition with the Court of Appeals in Salem, Oregon, within 60 days from the date this order is served. Note that under ORS 59.295(2), in the absence of a timely demand for a hearing, no personal shall be entitled to judicial review of the order.

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