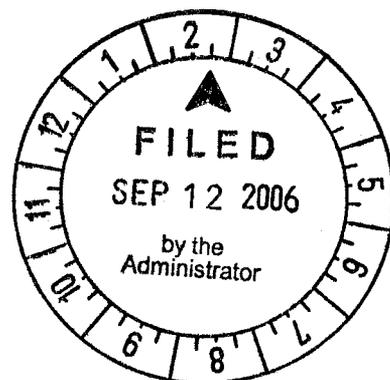


STATE OF OKLAHOMA
DEPARTMENT OF SECURITIES
FIRST NATIONAL CENTER, SUITE 860
120 NORTH ROBINSON
OKLAHOMA CITY, OKLAHOMA 73102



In the Matter of:

Ralph Ashley,

Respondent.

ODS File No. 06-123

NOTICE OF SERVICE ON THE ADMINISTRATOR
AND
AFFIDAVIT OF COMPLIANCE

STATE OF OKLAHOMA)
) SS.
COUNTY OF OKLAHOMA)

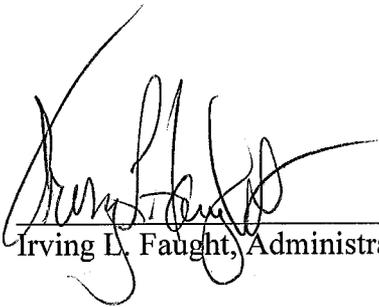
The undersigned affiant, of lawful age, being first duly sworn upon oath deposes and states:

1. That he is the Administrator (Administrator) of the Oklahoma Department of Securities.
2. That a copy of the Notice of Opportunity for Hearing (Notice) with Enforcement Division Recommendation (Recommendation) attached was delivered to Affiant in the office of the Administrator pursuant to Section 818.F of the Oklahoma Business Opportunity Sales Act (Act), Okla. Stat. tit. 71, §§ 801-829 (2001).
3. That this Affidavit of Compliance shall serve as notice to Ralph Ashley (Respondent) that the Administrator has received service of process on behalf of Respondent, pursuant to Section 818.F of the Act.
4. That a copy of the Notice, with the Recommendation attached, and a copy of this Affidavit are being sent this 12th day of September, 2006, by certified mail, return receipt requested, delivery restricted to addressee, to the last known address of Respondent, in compliance with Section 818.F of the Act.
5. That this Affidavit is declared filed of record as of the date set forth below in compliance with Section 818.F of the Act.

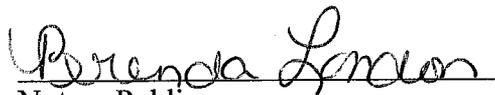
FURTHER AFFIANT SAYETH NOT.

Dated this 12th day of September, 2006.

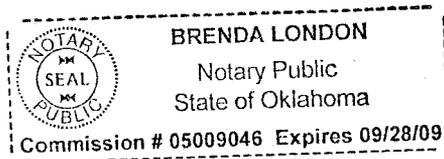
(SEAL)


Irving L. Faught, Administrator

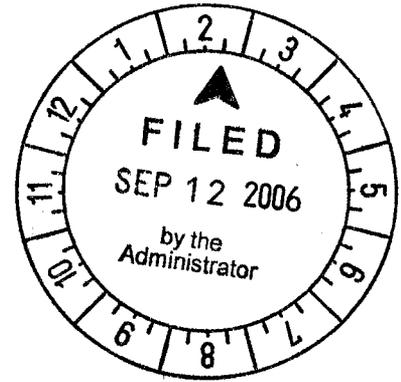
Subscribed and sworn to before me this 12th day of September, 2006.


Brenda London
Notary Public

My Commission Expires:
My Commission No.:
SEAL



STATE OF OKLAHOMA
DEPARTMENT OF SECURITIES
FIRST NATIONAL CENTER, SUITE 860
120 NORTH ROBINSON
OKLAHOMA CITY, OKLAHOMA 73102



In the Matter of:

Ralph Ashley,

Respondent.

ODS File No. 06-123

NOTICE OF OPPORTUNITY FOR HEARING

1. Pursuant to his authority under Section 813 of the Oklahoma Business Opportunity Sales Act (Act), Okla. Stat. tit. 71, §§ 801-829 (2001), the Administrator (Administrator) of the Oklahoma Department of Securities authorized an investigation into the activities of Ralph Ashley (Respondent), in connection with the offer, sale, and/or purchase of Bio Performance, Inc. business opportunities in and/or from the state of Oklahoma.

2. On the 8th day of September, 2006, the attached Enforcement Division Recommendation (Recommendation) was left in the office of the Administrator.

3. Pursuant to Section 814.B of the Act, the Administrator hereby gives notice to Respondent of his right to request a hearing to show why an order based on the Recommendation should not be issued (Notice).

4. Pursuant to Section 814.B of the Act, the request for a hearing on the Recommendation must be received by the Administrator within fifteen (15) days after service of this Notice. Failure to request a hearing within this time shall result in the issuance of an order against Respondent to cease and desist from the offer and sale of business opportunities in violation of Sections 806, 808, 809, 811 and 819 of the Act and imposing a civil penalty of Five Thousand Dollars (\$5,000.00).

5. A request for hearing shall be in writing and Respondent shall specifically admit or deny each allegation made in the Recommendation as required by 660:2-9-2(a) of the Rules of the Oklahoma Securities Commission and the Administrator of the Department of Securities (Rules).

6. Upon receipt of a written request pursuant to 660:2-9-2(a) of the Rules, a hearing on this Notice shall be set to commence within ninety (90) days or a written order denying hearing shall be issued.

7. Notice of the date, time, and location of the hearing shall be given to Respondent not less than forty-five (45) days in advance thereof pursuant to 660:2-9-2(c) of the Rules.

Witness my Hand and the Official Seal of the Oklahoma Department of Securities this 12th day of September, 2006.

(SEAL)

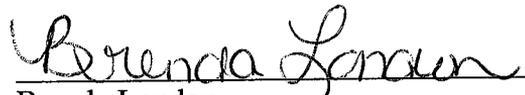


IRVING L. FAUGHT, ADMINISTRATOR OF THE
OKLAHOMA DEPARTMENT OF SECURITIES

CERTIFICATE OF MAILING

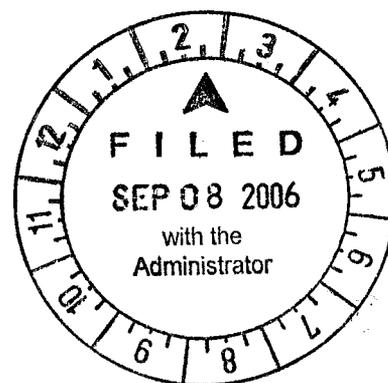
The undersigned hereby certifies that on the 12th day of September, 2006, a true and correct copy of the above and foregoing Notice of Opportunity for Hearing and attached Enforcement Division Recommendation was mailed by certified mail, return receipt requested, delivery restricted, with postage prepaid thereon addressed to:

Ralph Ashley
713 Crescent Circle
Midwest City, OK 73110



Brenda London
Paralegal

STATE OF OKLAHOMA
DEPARTMENT OF SECURITIES
THE FIRST NATIONAL CENTER, SUITE 860
120 NORTH ROBINSON
OKLAHOMA CITY, OKLAHOMA 73102



In the Matter of:

Ralph Ashley,

Respondent.

ODS File No. 06-123

ENFORCEMENT DIVISION RECOMMENDATION

Pursuant to the Oklahoma Business Opportunity Sales Act (Act), Okla. Stat. tit. 71, §§ 801-829 (2001), an investigation was conducted into the activities of Ralph Ashley, in connection with the offer and/or sale of business opportunities in and/or from the state of Oklahoma. Based thereon, the following Findings of Fact, Authorities and Conclusions of Law are submitted to the Administrator, or his designee, in support of the issuance of an order to cease and desist against Ashley.

Findings of Fact

1. Bio Performance, Inc. ("Bio Performance") is a Texas corporation that was, at all times relevant hereto, doing business in the state of Oklahoma. Bio Performance is in the business of selling independent business owner agreements ("Agreements") to the public ("Purchasers") that provide the Purchaser with the right to market products represented to increase gas mileage and decrease emissions when used in vehicles, and with the right to recruit new Purchasers.
2. Ralph Ashley ("Ashley"), a resident of Oklahoma, was, at all times relevant hereto, an agent for Bio Performance.
3. Beginning in April, 2006, Ashley contacted Oklahoma residents to offer the Agreements. Ashley conducted a seminar at his Oklahoma home to market the Agreements. Ashley told Purchasers to open a bank account for their Bio Performance business, access the Bio Performance web site to enroll, provide bank routing information through the Bio Performance web site so that Bio Performance could access funds for the Agreements, and sell the Agreements to other people. Ashley told Purchasers that they could purchase the Agreement for \$528 in a multi-level marketing program. Ashley told Purchasers under which existing Bio Performance Purchaser they would enroll. Ashley instructed Purchasers to send nothing through the mail or to do no business on the telephone.

4. Upon receipt by Bio Performance of the purchase funds, Ashley represented that Bio Performance would send products to Purchasers for the Purchasers to resell. Ashley told Purchasers that they would be paid \$200 for each person they brought into Bio Performance. Purchasers were entitled to cancel participation at any time in Bio Performance and Bio Performance agreed to repurchase inventory and sales aids at 90% of the Purchaser's net cost, less appropriate set-offs and legal claims. Ashley also provided Purchasers with promotional literature and/or advertising materials. The Bio Performance promotional literature and/or advertising materials represented that the company provided training for Purchasers.

5. Purchasers paid \$528 for each of the Agreements. Purchasers never received Bio Performance products.

6. The Agreements are not registered under the Act.

7. Ashley did not deliver to Purchasers a written disclosure document containing the information required by Section 808 of the Act and filed pursuant to Section 807 of the Act.

8. Ashley did not provide Purchasers with contracts that included the principal business address of Bio Performance, the name and address of the agent of Bio Performance in Oklahoma authorized to receive service of process, the business form of Bio Performance, or the delivery date of the Bio Performance products as required by Section 809 of the Act.

9. Ashley did not provide Purchasers with copies of financial statements of Bio Performance prepared in accordance with generally accepted accounting principles.

To the extent any of these Findings of Fact are more properly characterized as Conclusions of Law, they should be so considered.

Authorities

1. Section 802 of the Act provides in pertinent part:

* * *

3.a. "Business opportunity" means a contract or agreement, between a seller and purchaser, express or implied, orally or in writing, wherein it is agreed that the seller or a person recommended by the seller shall provide to the purchaser any products, equipment, supplies or services enabling the purchaser to start a business and the seller represents directly or indirectly, orally or in writing, that:

* * *

(5) The seller will refund all or part of the price paid to the seller, or repurchase any of the products, equipment or supplies provided

by the seller or a person recommended by the seller, if the purchaser is dissatisfied with the business; or

(6) The seller will provide a marketing plan.

* * *

6. "Marketing plan" means advice or training, provided to the purchaser by the seller or a person recommended by the seller, pertaining to the sale of any products, equipment, supplies or services and the advice or training includes, but is not limited to, preparing or providing:

a. Promotional literature, brochures, pamphlets or advertising materials;

b. Training regarding the promotion, operation or management of the business opportunity; or

c. Operational, managerial, technical or financial guidelines or assistance.

7. "Offer" or "offer to sell" includes every attempt to dispose of a business opportunity for value or solicitation of an offer to purchase a business opportunity.

* * *

11. "Sale" or "sell" includes every contract or agreement of sale, contract to sell, disposition of a business opportunity or interest in a business opportunity for value.

2. Section 806 of the Act provides:

It is unlawful for any person to offer or sell any business opportunity, as defined in Section 802 of this title, in this state unless the business opportunity is registered under the provisions of the Oklahoma Business Opportunity Sales Act or is exempt under Section 803 of this title.

3. Section 807 of the Act provides in part:

A. In order to register a business opportunity, the seller shall file with the Administrator one of the following disclosure documents with the appropriate cover sheet as required by Section 808 of this title, a consent to service of process as specified in subsection B of this section, the appropriate fee set forth in Section 829 of this title, and any other information determined by the Administrator to be necessary:

1. A Uniform Franchise Offering Circular prepared in accordance with the guidelines adopted by the North American Securities Administrators Association, Inc. The Administrator may by rule adopt any amendment to the Uniform Franchise Offering Circular that has been adopted by the North American Securities Administrators Association, Inc.;

2. A disclosure document prepared pursuant to the Federal Trade Commission rule entitled Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures; 16 C.F.R. Section 436. The Administrator may by rule adopt any amendment to the disclosure document prepared pursuant to 16 C.F.R. Section 436 that has been adopted by the Federal Trade Commission; or

3. A disclosure document prepared pursuant to Section 808 of this title.

4. Section 808 of the Act provides in part:

A. It shall be unlawful for any person to offer or sell any business opportunity required to be registered pursuant to the Oklahoma Business Opportunity Sales Act unless a written disclosure document as filed pursuant to Section 807 of this title is delivered to each purchaser at least ten (10) business days prior to the execution by a purchaser of any contract or agreement imposing a binding legal obligation on the purchaser or the payment by a purchaser of any consideration in connection with the offer or sale of the business opportunity.

5. Section 809 of the Act provides:

A. It is unlawful for any person to offer or sell any business opportunity, as defined in Section 2 [802] of the Oklahoma Business Opportunity Sales Act, unless the business opportunity contract or agreement is in writing and a copy of the contract or agreement is given to the purchaser at the time the purchaser signs the contract or agreement.

B. Contracts or agreements shall set forth in at least ten-point type the following:

1. The terms and conditions of any and all payments due to the seller;

2. The seller's principal business address and the name and address of the seller's agent in this state authorized to receive service of process;

3. The business form of the seller, whether corporate, partnership or otherwise;
 4. The delivery date or, when the contract provides for a periodic delivery of items to the purchaser, the approximate delivery date of the product, equipment or supplies the seller is to deliver to the purchaser to enable the purchaser to start his or her business; and
 5. Whether the product, equipment or supplies are to be delivered to the purchaser's home or business address or are to be placed or caused to be placed by the seller at locations owned or managed by persons other than the purchaser.
6. Section 811 of the Act provides:
- In connection with the offer or sale of a business opportunity, no seller may make or use any of the representations set forth in divisions (4) and (5) of subparagraph 3 of Section 2 [802] of the Oklahoma Business Opportunity Sales Act unless the seller has at all times a minimum net worth of Fifty Thousand Dollars (\$50,000.00) as determined in accordance with generally accepted accounting principles.
7. Section 814 of the Act provides in pertinent part:
- A. Whenever it appears to the Administrator that any person has engaged in or is about to engage in any act or practice constituting a violation of any provision of the Oklahoma Business Opportunity Sales Act or any rule or order hereunder, the Administrator may:
1. Issue an order directing each person to cease and desist from continuing the act or practice and/or issue an order imposing a civil penalty up to a maximum of Five Thousand Dollars (\$5,000.00) for a single violation or transaction or of Fifty Thousand Dollars (\$50,000.00) for multiple violations or transactions in a single proceeding or a series of related proceedings[.]
8. Section 819 of the Act provides:
- It is unlawful for any person, in connection with the offer or sale of any business opportunity in this state, directly or indirectly:
1. To employ any device, scheme or artifice to defraud;
 2. 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; or
 3. To engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person.

Conclusions of Law

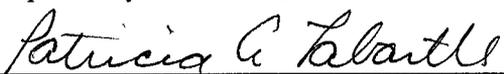
1. The Agreements are business opportunities as defined by Section 802 of the Act.
2. Ashley offered and sold business opportunities in and/or from the state of Oklahoma.
3. Ashley engaged in the offer and sale of the business opportunities without registration of the business opportunities under the Act, in violation of Section 806 of the Act.
4. Ashley failed to provide purchasers with the disclosure document required by Section 808 of the Act.
5. Ashley failed to provide Purchasers with a contract or agreement containing the information required by Section 809 of the Act.
6. Ashley offered and sold business opportunities using the representation that Bio Performance will repurchase inventory and sales aids at 90% of the Purchaser's net cost, less appropriate set-offs and legal claims, without a minimum net worth of Fifty Thousand Dollars (\$50,000.00) as determined in accordance with generally accepted accounting principles, in violation of Section 811 of the Act.
7. Ashley misrepresented material facts and omitted material facts in connection with the offer and sale of business opportunities, in violation of Section 819 of the Act.

To the extent any of these Conclusions of Law are more properly characterized as Findings of Fact, they should be so considered.

WHEREFORE, it is recommended that the Administrator issue an order against Ashley to cease and desist the offer and sale of business opportunities in and/or from this state and impose a civil penalty against Ashley in the sum of Five Thousand Dollars (\$5,000.00).

Dated this 8th day of September, 2006.

Respectfully Submitted,



Patricia A. Labarthe
Enforcement Attorney
Oklahoma Department of Securities
120 North Robinson, Suite 860
Oklahoma City, OK 73102
(405) 280-7700