

State of Missouri
Office of Secretary of State

Case No. AP-09-24

IN THE MATTER OF:

THE DUNCAN GROUP;
THE DUNCAN GROUP, LLC;
THE DUNCAN GROUP INVESTMENTS, LLC;
THE DUNCAN GROUP EQUITY PARTNERS, LLC; and
AARON DUNCAN,

Respondents.

Serve all at:

390 South Woodsmill Road
Suite 160
Chesterfield, Missouri 63017

**ORDER TO CEASE AND DESIST AND ORDER TO SHOW CAUSE WHY CIVIL
PENALTIES AND COSTS SHOULD NOT BE IMPOSED**

On June 1, 2009, the Enforcement Section of the Securities Division of the Office of Secretary of State (the "Enforcement Section"), through its Deputy Chief Counsel, Roumen Manolov, submitted a Petition for Order to Cease and Desist and Order to Show Cause Why Civil Penalties and Costs Should Not Be Imposed. After reviewing the petition, the Commissioner issues the following findings of fact, conclusions of law and order:

I. FINDINGS OF FACT

1. The Duncan Group ("TDG"), is a Missouri registered limited liability company with a last known business address of 390 South Woodsmill Road, Suite 160, Chesterfield, Missouri 63017. TDG purportedly engaged in the business of purchasing, rehabilitating and selling real estate.
2. The Duncan Group, LLC ("TDG LLC"), is a Missouri registered limited liability company with a last known business address of 390 South Woodsmill Road, Suite 160, Chesterfield, Missouri 63017. TDG LLC, purportedly engaged in the business of purchasing, rehabilitating and selling real estate.
3. The Duncan Group Investments, LLC ("TDGI"), is a Missouri registered limited liability company and a subsidiary of TDG. TDGI has a last known mailing address of 390 South Woodsmill Road, Suite 160, Chesterfield, Missouri 63017.
4. The Duncan Group Equity Partners, LLC ("TDGEP"), is a Missouri limited liability company. TDGEP has a last known mailing address of 390 South Woodsmill Road, Suite 160, Chesterfield, Missouri 63017.
5. Aaron W. Duncan ("Duncan") is the president and CEO of TDG, TDG LLC, and an organizer of TDGI. Duncan maintains a last known mailing address of 390 South Woodsmill Road, Suite 160, Chesterfield, Missouri 63017.
6. At all times pertinent to this investigation, Duncan conducted business under the names of all the entities referenced in the paragraphs above.
7. As used herein, the term "Respondents" refers to TDG, TDG LLC, TDGI, TDGEP, and Duncan.
8. Sometime in July 2007, a Missouri resident ("MR1") heard about an investment opportunity in TDG through a family member. As a result, MR1 contacted Duncan about the investment opportunity.
9. Among other things, the Respondents told MR1 that:
 - a. TDG was looking for investors to invest in real estate investments;
 - b. TDG was in real estate;
 - c. TDG would use MR1's funds to purchase properties for rehabbing purposes;
 - d. Properties would be titled in the name of MR1 as collateral; and
 - e. MR1 would receive a return on MR1's investment in four (4) to six (6) months with a return of up to fifty percent (50%).

10. On July 27, 2007, Duncan issued a promissory note to MR1. The note states, among other things, that MR1 would receive a return of five thousand dollars (\$5,000) in addition to the outstanding principal balance of fifteen thousand dollars (\$15,000). The note was due and payable without demand on February 3, 2008.
11. Attached to the note was a document titled "Receipt of Funds." It states, among other things, "I, Aaron W. Duncan, acknowledge on this 27th day of July 2007, that I am in receipt of funds in the amount of fifteen thousand dollars and 00/100 (\$15,000.00), from [MR1]. These funds are to be utilized for investment purposes through The Duncan Group, LLC or any one of its subsidiary companies"
12. On or about July 26, 2007, MR1 received a letter from Duncan that stated:

"Dear [MR1]:

Thank you for your investment with the Duncan Group! I want to take this opportunity to welcome you and let you in on some of the exciting things that are happening within our company.

Thanks to you we are aggressively and actively searching for and acquiring new properties in several areas including: St. Louis, MO; Phoenix, AZ; Dallas, TX; Jacksonville, FL; and other major metropolitan areas. You will soon be able to view some of these projects on our new website, which will be released this summer. On the website you will also have access to your quarterly investment statements, as well as see what other exciting things we have going on in our Commercial and Brokerage divisions.

Please keep in mind our investor referral program. The Duncan Group offers a bonus of \$1,000 for any referrals that become long-term investors with us.

Our staff is always available to answer any questions you may have regarding your investment. Please don't hesitate to contact us if you have any questions or concerns, or if you know of anyone who might be interested in hearing more about us. We look forward to a long-term partnership with you and we are excited about the tremendous real estate opportunities we are pursuing together.

Best regards,
Aaron Duncan /s/
Printed Name: Aaron Duncan
Title: President and CEO"

13. On August 2, 2007, MR1 wired fifteen thousand dollars (\$15,000) to TDG.
14. On August 2, 2007, MR1 received an email from Duncan. The email stated:

"Dear Investor,

Per my last email, we will be changing our short-term investment strategy to a six month term with a slightly smaller ROI. If you would like a copy of this email, please let me know. Our plan is to completely phase out the short-term investment program and only allow current investors who are invested in a *long-term program take advantage of future short-term deals. We still currently have the following short-term deals left from our last email. This will be the final list for those who are not invested long-term with TDG so HURRY while supplies last! ;-) If you are not able to invest but know someone who is, I have included a "Finders Fee" for each investment opportunity.

\$25,000 investment
\$6,250 return in 180 days
\$750 finder's fee

\$30,000 investment
\$8,000 return in 180 days
\$1,000 finder's fee

\$50,000 investment
\$15,000 return in 180 days
\$1,000 finder's fee

\$80,000 investment
\$24,000 return in 180 days
\$1,500 finder's fee

\$100,000 investment
\$30,000 return in 180 days
\$2,500 finder's fee

*Long-Term: 1 year @ 12% ROI /2 year @15%/3 year @ 18% ROI. Investor MUST have a minimum of \$75,000 invested into a long-term program in order to meet the criteria. Only investors who are invested in TDG long-term investments will be able to take advantage of future short-term investments.”

15. On or about August 3, 2007, MR1 executed a document with Duncan. The document, “The Duncan Group Investment Properties, LLC”, reads as follows:

“I, [MR1], acknowledge that the principal sum of \$15,000.00 together with interest as of August 3, 2007, has been moved from The Duncan Group, LLC into one of its subsidiaries, the Duncan Group Investment Properties, LLC as of August 20, 2007.

Signed on the day and year first above written [sic]

Borrower:

The Duncan Group Investment Properties, LLC

By: Aaron W. Duncan /s/

Printed Name: Aaron W. Duncan

Lenders:

By: [MR1]/s/

Printed Name: [MR1]”

16. The Enforcement Section’s investigation revealed that MR1’s fifteen thousand dollars (\$15,000) was not moved into a subsidiary account under the name of TDGIP on August 20, 2007.

17. On August 5, 2007, MR1 received another email from Duncan. The subject line of the email read, “3 small short-term investments left-HUGE RETURNS”:

“In an effort to maintain our annual quota with a national bank dealing with foreclosures, we have been offered 3 GREAT properties that will pay EXCELLENT returns! This is the final batch of 120 day investments before the new 180 day terms kick in for “long-term” investors. We currently have the following properties:

\$40,000 investment
\$20,000 return in 120 days
*\$2,000 “finders fee”

\$40,000 investment
\$20,000 return in 120 days
*\$2,000 “finders fee”

\$40,000 investment
\$15,000 return in 120 days
*2,000 “finders fee”

With a 50% return these wont [sic] last long. If you or someone you know might be interested in one of these HOT properties please email me ASAP!

Thanks,

Aaron Duncan

*Finders Fee-You will receive a \$2,000 finders fee whether you or one of your contacts invests in one of these properties.”

18. On August 8, 2007, Duncan issued a second promissory note to MR1, stating among other things, that MR1 will receive a return of ten thousand dollars (\$10,000) in addition to the outstanding principal balance of twenty thousand dollars (\$20,000). The note is due and payable without demand on December 8, 2007.

19. Attached to the note was a document titled “Receipt of Funds.” It reads, among other things, “I, Aaron W. Duncan, acknowledge on this 8th day of August 2007, that I am in receipt of funds in the amount of twenty thousand dollars and 00/100 (\$20,000.00), from [MR1]. These funds are to be utilized for investment purposes through The Duncan Group, LLC or any one of its subsidiary companies.”

20. On August 10, 2007, MR1 emailed Duncan. The email read:

“O my!!! Aaron, I sure hope this is all up and up. I have just invested a whole year salary! I only make \$35,000 a year I’m a poor church secretary

You should have my transfer soon.

[MR1]"

21. On August 10, 2007, Duncan responded to MR1's email:

"Thanks [MR1]! Please don't worry about anything!!! You have my word that everything will be fine and your money will be safe!!! Let's turn that "years salary" into two years and three years salary . . .

Thanks for the follow up.

Aaron"

22. On August 10, 2007, MR1 wired twenty thousand dollars (\$20,000) to TDG for a second investment in TDG.

23. On August 30, 2007, MR1 and Duncan executed and notarized a document titled "General Power of Attorney." This document appoints Duncan as the attorney-in-fact for the purpose of applying MR1's name to a mortgage deed or releasing a mortgage.

24. On or about October 3, 2007, MR1 questioned Duncan via email about investing MR1's IRA through the Sterling Trust Company, TDG's trust company. Among other things, MR1 stated:

". . . Next question; I talked to Sterling Trust Co. about moving my IRA to them and investing with the Duncan Group. They told me that as long as I had my IRA with them it would be FDIC insured, but as soon as I invest it with Duncan Group it would no longer be insured. Soooo [sic], if I would invest my IRA with Duncan Group thru Sterling Trust and something would happen to the Duncan Group I would loose [sic] all my retirement. ???"

25. A representative for TDG responded to MR1's email and stated among other things, the following:

"As far as your IRA money at Sterling, usually cash up to \$100,000 are [sic] FDIC insured at banking institutions. I think this is what Sterling is referring to. But, when the money is transferred to TDG then your money is being used by us to rehab and improve properties. Like any investment there is risk involved, however; we are different in that we give our investors an "ownership interest" in the properties that we own through our LLC concept. So, if something did happen to TDG, then you would have part interest in the properties owned by the LLC you are in."

26. MR1 decided not to invest her IRA with TDG.

27. Sometime after November 30, 2007, MR1 emailed Duncan in connection to MR1's promissory note from August 3, 2007:

"Aaron,

Remember me? [MR1], [name of another investor] cousin.

I have an investment maturing December 8th, total \$30,000. After I get my check from you I can add \$5,000 to it for the investment your [sic] offering of \$35,000. \$17,500 return in 120 days.

Can you hold this one for me until I get my check? We could have Nikkie date it for December 10th.

Let me know.

Thanks

[MR1]"

28. On December 3, 2007, Duncan responded to MR1's email of November 30th and stated:

"Hi [MR1],

Of course I remember you! I would be able to hold this one for you however, because of the timing we should have to immediately roll over your investment coming due into the new one. The title company wants a quick close on this one as you might imagine. Let me know if this is okay and we will send you the new contracts and a statement showing that your initial investment was rolled into this new deal.

Thanks,

Aaron"

29. On or about December 12, 2007, MR1 received a return of principal and interest in the amount of thirty thousand dollars (\$30,000) on MR1's second investment from August 8, 2007.

30. On December 24, 2007, MR1 wired thirty five thousand dollars (\$35,000) to TDG for a third investment in TDG.

31. Duncan issued a third promissory note to MR1 dated December 24, 2007. This note is similar to that of MR1's previous two (2) notes and reads, among other things, MR1 would receive in one hundred twenty (120) days from the date of the note, seventeen thousand five hundred dollars (\$17,500), or a rate of return of fifty percent (50%), as well as the return of the outstanding principal.
32. On or after February 3, 2008, MR1 became concerned that MR1 had not received the return of principal or promised interest on the first note due on February 3, 2008. MR1 contacted Duncan concerning the return of MR1's first investment from July 27, 2007.

33. On February 12, 2008, Duncan replied to MR1 via email and stated:

"[MR1],

We understand your current situation and ask that you understand the dire condition of the current real estate market. Many of our investors have financial obligations they have to meet and are being faced with difficult times. Any investment carries with it an inherent risk of loss and, unfortunately, your investment with The Duncan Group is no different.

With that being said, what we are willing to do for you is get your principal investment of \$15,000.00 and a reasonable return of 10% back to you by the end of the month.

I feel this is the best offer we are able to make at this time.

Thank you for your support and once again we apologize for the current situation.

Sincerely,

Aaron W. Duncan"

34. The Enforcement Section's investigation revealed that on or about February 18, 2008, MR1 and other TDG investors received a letter from Duncan ("Rescission Letter"). The letter stated, among other things:
 - a. promissory notes entered into between TDG and investors are a security under the Missouri Securities Act of 2003;
 - b. the securities sold by TDG were not registered or exempt from registration when sold to investors because TDG failed to file a timely exemption notice;
 - c. investors were led to believe that investments were secured by a deed in a particular parcel of property;
 - d. "the Act provides that any person who sells a security without the security being registered or otherwise in violation of the Act is liable to the person buying the security for the amount of the consideration paid for the security together with interest of 10% per year from the date of purchase, less the amount of any income received on the security"; and
 - e. "this letter is to inform you of this right and to offer to rescind the purchase of the securities from The Duncan Group, LLC [sic]. Included in this letter is a statement as to whether or not you wish to take advantage of this offer. Please fill out the attached form and return it to this office within 30 days. If you wish to take advantage of the rescission, the amount you originally invested plus 10% interest, less any income you received, will be returned to you."
35. MR1 responded by submitting the statement for the rescission offer via certified mail.
36. Sometime after February 2008, MR1 contacted Duncan again concerning the return of MR1's investment. Among other things, MR1 requested that Duncan provide MR1 a property in exchange for the outstanding debt.
37. Duncan suggested that MR1 speak directly with TDG's "real estate department" and provided MR1 with the telephone number.
38. After contacting TDG's real estate department and leaving several messages, MR1's telephone calls were not returned.
39. MR1 made further attempts to contact Duncan. Duncan would no longer answer or return MR1's telephone calls. Duncan's telephone is now disconnected.
40. On April 15, 2008, MR1 emailed TDG to inquire about MR1's investment and stated:

"Hey Anissa,

I sent you an email last Wednesday and haven't heard back from you. Just was wondering how far down the line I am to be paid? Last time you checked I was around 20th. Please let me know. Because now both of my investments are due.

Thanks
[MR1]"

41. On April 24, 2008, a representative for TDG responded to MR1's email and stated among other things, the following:

"[MR1],

Not much has changed since our last investor call. We are getting more traffic through our properties, but we are having to lower prices. We have only sold 2 properties since November, one isn't even closing until next month. It is difficult to pay investors when we are losing equity and paying expenses to keep the company running. We are doing everything we can.

Unfortunately, you have not moved in the pay-off order. We are still working to finish November and December investors.

Thank you for your patience. Please let me know if you have any further questions."

42. On or about October 1, 2008, MR1 received a letter (the "Bankruptcy Letter") from Duncan that stated the following:

"Dear [MR1],

It has been a while since our last letter, so I would like to take this opportunity to update you on our current situation.

I'm sure you are aware that the real estate and credit markets have taken nose-dives in the last year. As a result, we have taken major losses on every property we have sold within the last 6 months-1 year. Although our team had several possible plans in place to sustain and hopefully recover some of these losses, several unfortunate circumstances have derailed our efforts to the point that we cannot continue on with business. Therefore, The Duncan Group will be closing and I will be filing for personal bankruptcy in the near future.

I have done my best to keep this from happening, but several factors, both business and personal, have made this a necessary move. I have consulted at length with legal counsel, friends and advisors whom I trust and have been convinced that this is the only option left at this time.

In sum, The Duncan Group is obviously unable to repay its investors and I am deeply sorry for how the situation has turned out. Please know that this was never my intent and I have not taken this lightly. The financial and emotional strain has been very hard for me personally, as I know it is for you.

Any inquires you have should be directed to my bankruptcy attorney, [name of attorney] at phone number [phone number].

Sincerely,

The Duncan Group
By: Aaron W. Duncan /s/
Printed Name: Aaron W. Duncan"

43. Respondents did not provide MR1 with documentation that MR1 had a secured interest in any property in connection with the Respondents.

44. MR1 contacted the St. Louis County Recorder of Deeds office to inquire whether MR1's name was listed on any properties in their county. The office told MR1 that no properties were listed in MR1's name.

45. To date, MR1 has not received the principal or a return on MR1's first and third investments.

46. Sometime in late 2006, Missouri residents ("MR2" and "MR3"), husband and wife, and both sixty seven (67) years old at that time, heard about an investment opportunity in TDG through a friend.

47. MR2 contacted Duncan via telephone.

48. Shortly after the telephone conversation, Duncan arranged to meet MR2 and MR3 at their home. Among other things, Duncan told MR2 and MR3:

- a. TDG would use their funds to purchase properties to rehab;
- b. TDG was buying and rehabbing properties "everywhere";
- c. TDG would pay twenty five percent (25%)¹ interest for the first year and twenty percent (20%) interest for years two (2) through five (5) on MR2's and MR3's long term investments;
- d. MR2 and MR3 could withdraw the interest at any time; or
- e. properties would be titled in the names of MR2 and MR3.

49. Duncan provided MR2 and MR3 with a written document. The document reads, among other things:
- that TDG “searches for niche opportunities in every segment of the real estate market. We provide our investors with a wide range of investment options, ranging from distressed single-family residences to large condominium conversions to hotels and resorts;”
 - “[TDG] invest[s] by targeting undervalued or distressed real estate properties for resale. This includes foreclosures, pre-foreclosures, and bank-owned properties that might require repositioning or focused management;”
 - that TDG “funds its enterprises from a variety of equity partners, terms for whom are determined on a venture-by-venture basis. Typically, our equity partners are securitized by first mortgages on the property, are paid interest at above market rates, and receive their full equity loan in a payment together with an agreed upon percentage at the end of the contract term;”
 - that TDG “has worked with a wide range of financial investments, from \$25,000 to \$12 million. We have earned an impressive reputation for meeting and surpassing required rates of return on every investment, and those returns have been imperative to our growth as a company;”
50. Records obtained by the Enforcement Section indicate that in January 2007, TDG received three (3) wire transfers totaling five hundred nine thousand one hundred forty two dollars and thirty four cents (\$509,142.34) from MR2 and MR3. TDG received the following wire transfers from Equity Trust Company (“Equity Trust”):²
- on January 3, 2007, three hundred twelve thousand two hundred thirty seven dollars and eleven cents (\$312,237.11) from MR3’s Equity Trust account;
 - on January 23, 2007, one hundred three thousand nine hundred sixty five dollars and thirty six cents (\$103,965.36) from MR3’s Equity Trust account; and
 - on January 24, 2007, ninety two thousand nine hundred thirty nine dollars and eighty seven cents (\$92,939.87) from MR2’s Equity Trust account.
51. MR2 and MR3 incurred approximately twenty six thousand dollars (\$26,000) in surrender charges from liquidating their prior investments to invest in TDG.
52. Duncan issued three (3) promissory notes to MR2 and MR3, each dated December 29, 2006.
53. The three notes appear identical and provide, among other things:

“**FOR VALUE RECEIVED**, the undersigned, The Duncan Group, LLC a Missouri limited liability company (“Borrower”), whose mailing address is 1360 S. Fifth Street, Suite 370, St. Charles, MO 63301. Equity Trust Company Custodian FBO [MR2 or MR3] (“Lender”), whose mailing address is [address of MR2 and MR3] or his/her assignee, the principal sum of [amount of investment] or so much as may be advanced hereunder, together with interest thereon as hereinafter provided.

- Rate of Interest** – From the date hereof interest shall be charged on the outstanding principal balance due at 25% the 1st year and 20% on the 2nd-5th years for a 5 year term.
 - Interest Payments** – Interest on the principal amount at the rate of interest set forth in paragraph 1 above shall be due and payable without demand on an annual basis on the 29th of December. Interest shall compound annually.
 - Principal Payments** – Notwithstanding anything set forth above, all sums due under this Note, the principal and interest, if not sooner paid, shall be due and payable on the 29th day of December 2011.”
54. Sometime between December 29, 2006 and August 20, 2007, MR2 and MR3 executed a document with Duncan in connection to the three investments. The document titled, “The Duncan Group Equity Partners, LLC” states the following:

“I, [MR2 or MR3], acknowledge that the principal sum of [amount of investment] together with interest as of December 29, 2006, has been moved from The Duncan Group, LLC into one of its subsidiaries, the Duncan Group Equity Partners, LLC as of August 20, 2007.

Signed on the day and year first above written

Borrower:
The Duncan Group Equity Partners, LLC
By: Aaron W. Duncan /s/
Printed Name: Aaron W. Duncan

Lenders:

By: [MR2 or MR3] /s/

Printed Name: [MR2 or MR3]"

55. The Enforcement Section's investigation revealed that MR2's and MR3's funds were not moved into a subsidiary account under the name of TDGEP on August 20, 2007.
56. On August 22, 2007, MR2 and MR3 individually executed and notarized a "General Power of Attorney." This document appoints Duncan as the attorney-in-fact for the purpose of applying MR2's or MR3's name to a mortgage deed or releasing a mortgage relating to real estate transactions.
57. On or about October 15, 2007, MR2 and MR3 received a letter from Duncan. Among other things, the letter states:
 - a. TDG moved into a new office located at 390 S. Woodsmill Road, Suite 160. Chesterfield, Missouri 63017 effective October 1, 2007;
 - b. TDG revamped their promissory notes and contracts to better reflect their new business model. The new contracts "better explain your investment while protecting the investor with some degree of "ownership interest" in our LLC business model;"
 - c. TDG will no longer offer short-term investments and are only accepting long-term investors;
 - d. a finder's fee will be paid to any investor that refers a new investor to TDG; and
 - e. TDG has implemented quarterly statements.
58. On or about December 12, 2007, MR2 and MR3 made a second investment in TDG.
59. Records obtained by the Enforcement Section indicate that on January 7, 2008, TDG received two (2) wire transfers totaling seventy three thousand three hundred forty two dollars (\$73,342) from MR2 and MR3. TDG received the following wire transfers from Equity Trust:
 - a. sixty one thousand two hundred seventy nine dollars (\$61,279) from MR3's Equity Trust account.
 - b. twelve thousand sixty three dollars (\$12,063) from MR2's Equity Trust account.
60. On or about January 9, 2008, Duncan issued two (2) promissory notes to MR2 and MR3 in connection to their second investment.
61. The two notes appear identical and stated, among other things, the following:
 - a. "FOR VALUE RECEIVED, the undersigned, The Duncan Group, LLC, a Missouri limited liability company ("Manager"), whose mailing address is 390 S. Woodsmill Road, Suite 160, Chesterfield, MO 63017, promises to pay Equity Trust Company, Custodian FBO: [MR2 or MR3], IRA ("Payee"), whose mailing address is [address of MR2 or MR3], or his/her assignee, the principal sum of [amount of investment], together with interest thereon as hereinafter provided."
 - b. "From the Effective Date, interest shall be charged on the outstanding principal balance due at eighteen percent (18%) per annum. Unpaid interest shall compound annually."
 - c. ". . . all sums due under this Note, the principal and interest, if not paid sooner, shall be due and payable within ten (10) business days of the date that is three (3) years from the Effective Date."
 - d. "accrued interest shall be added to the outstanding principal balance of the Note, on the effective date of the Note during its term, and shall be compounded as described above."
 - e. "the principal amount may be prepaid in whole or in part at any time without premium or penalty."
62. Between December 31, 2006 and October 1, 2008, MR2 and MR3 received statements from Equity Trust. The statements dated October 1, 2008 and December 31, 2008, show that MR2 and MR3's account value was less than two dollars (\$2.00).
63. Concerned that interest payments were not being properly credited in their accounts, MR3 telephoned Equity Trust to inquire about the accounts. MR3 was told, among other things, that there were no funds remaining in MR2 and MR3's accounts.
64. MR2 and MR3 did not receive documentation that they had a secured interest in any property in connection with the Respondents.
65. On or about October 1, 2008, MR2 and MR3 also received the "Bankruptcy Letter" described in paragraph 42 from Duncan.

66. MR2 and MR3 invested their life savings with TDG, a total of five hundred eighty two thousand four hundred eighty four dollars and thirty four cents (\$582,484.34).
67. To date, MR2 and MR3 have not received a return of principal or interest on their investment.
68. Information obtained during the Enforcement Section's investigation show investors' funds were placed in various bank accounts, under multiple account numbers. These funds were held in the name of TDG in Pulaski Bank and Commerce Bank.
69. Records obtained from Commerce Bank indicate that Duncan opened a business account in the name of The Duncan Group, LLC on October 4, 2007, and from October 29, 2007 through November 2, 2007, at least three (3) wire transfers were made to this account from investors in TDG totaling eighty thousand dollars (\$80,000).
70. Records obtained from Commerce Bank indicate that Duncan opened a business account in the name of Duncan Real Estate Group, LLC on October 4, 2007, and from May 18, 2008 through June 24, 2008, at least four (4) wire transfers were made to this account from investors in TDG totaling one hundred sixty thousand dollars (\$160,000).
71. Records obtained from Commerce Bank indicate that Duncan opened another business account in the name of The Duncan Group, LLC on October 16, 2007, and from November 13, 2007 through February 21, 2008, at least fifteen (15) wire transfers were made to this account from investors in TDG totaling six hundred ten thousand eight hundred forty two dollars (\$610,842).
72. Records obtained from Pulaski Bank indicate that Duncan opened a business account in the name of The Duncan Group on June 16, 2006, and from September 7, 2006 through October 22, 2007, at least forty three (43) wire transfers and deposits were made to this account from investors in TDG totaling two million one hundred thirty eight thousand five hundred sixty four dollars and seventy cents (\$2,138,564.70).
73. Records obtained from Pulaski Bank indicate that Duncan opened a business account in the name of The Duncan Group on November 1, 2005, and from January 25, 2006 through December 12, 2007, at least fifty three (53) wire transfers and deposits were made to this account from investors in TDG totaling one million six hundred eighteen thousand five hundred sixty dollars and twenty cents (\$1,618,560.20).
74. Respondents offered and sold investments to many investors and over thirty (30) of such investors are Missouri residents.
75. Duncan offered and sold investment opportunities via promissory notes to investors through seminars and "word of mouth."³
76. Records obtained during the Enforcement Section's investigation show that TDG accepted tax-deferred funds from investors' IRAs and other qualified plans through the trust companies, Sterling Trust Company and Equity Trust Company.
77. On July 23, 2008, the Enforcement Section received information from Duncan's attorney that TDG sold at least seven (7) properties.
78. Despite being told by the Respondents that they would have a secured interest in the properties that were to be rehabbed by the Respondents, records fail to show that MR1, MR2 or MR3 had a secured interest in any property of the Respondents.
79. Duncan offered many investors a fifty percent (50%) return on their investment with a payout in one hundred twenty (120) days, and long-term notes with high rates of return with a payout in three (3) to five (5) years.
80. TDG's offer to rescind investment transactions and return investors' funds in the February 18, 2008, "Rescission letter" read that if in thirty (30) days the investor elected to rescind their investment, their investments would be refunded.
81. On or about October 1, 2008, most investors received the "Bankruptcy Letter" described in paragraph 42 from Duncan.
82. A check of the records maintained by the Missouri Commissioner of Securities confirmed that:
 - a. there was no registration or notice filing indicating the status as a "federal covered security" for the promissory notes offered by Respondents;
 - b. respondent Duncan was not registered to offer or sell securities in Missouri; or
 - c. respondents were not registered as a broker-dealer in Missouri.

II. STATUTORY PROVISIONS

83. Section 409.1-102(28), RSMo. (Cum. Supp. 2008), defines a security, in part, as a note; stock; treasury stock; security future; bond; debenture; evidence of indebtedness; certificate of interest or participation in a profit-sharing agreement.
84. Section 409.1-102(28)(D), RSMo. (Cum. Supp. 2008), defines "investment contract" as an investment in a common enterprise with the expectation of profits to be derived primarily from the efforts of a person other than the investor, and a

“common enterprise” means an enterprise in which the fortunes of the investor are interwoven with those of either the person offering the investment, a third party, or other investor.

85. Section 409.1-102(28)(E), RSMo. (Cum. Supp. 2008), reads, in part, that an “investment contract,” may include, among other contracts, “an interest in a limited partnership and a limited liability company”
86. Section 409.1-102(20), RSMo. (Cum. Supp. 2008), defines “person” in part, as an individual, corporation, business trust, partnership, limited liability company, or any other legal or commercial entity.
87. Section 409.1-102(26), RSMo. (Cum. Supp. 2008), defines “sale” to include “every contract of sale, contract to sell, or disposition of, a security or interest in a security for value.” That same section defines “offer to sell” as “every attempt or offer to dispose of, or solicitation of an offer to purchase, a security or interest in a security for value.”
88. Section 409.3-301, RSMo. (Cum. Supp. 2008), states:

It is unlawful for a person to offer or sell a security in this state unless:

- (1) The security is a federal covered security;
- (2) The security, transaction, or offer is exempted from registration under Sections 409.2-201 to 409.2-203; or
- (3) The security is registered under this act.

89. Under Section 409.4-401(a), RSMo. (Cum. Supp. 2008), it is unlawful for a person to transact business in this state as a broker-dealer unless the person is registered under this act as a broker-dealer or is exempt from registration.
90. Under Section 409.4-402(a), RSMo. (Cum. Supp. 2008), it is unlawful for an individual to transact business in this state as an agent unless the individual is registered under this act as an agent or exempt from registration.
91. Section 409.5-501, RSMo. (Cum. Supp. 2008), states:

It is unlawful for a person, in connection with the offer, sale, or purchase of a security, directly or indirectly:

- (1) employ a device, scheme, or artifice to defraud;
- (2) To make an untrue statement of a material fact or to omit state a material fact necessary in order to make the statement made, in the light of the circumstances under which it is made, not misleading; or
- (3) To engage in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person.

92. Section 409.5-503(a), RSMo. (Cum. Supp. 2008), reads in part, “[i]n a[n] . . . administrative proceeding under this act, a person claiming an exemption, exception, preemptions, or exclusion has the burden to prove the applicability of the claim.”
93. Section 409.6-601(a), RSMo. (Cum. Supp. 2008), provides that the Missouri Securities Act of 2003 “shall be administered by the commissioner of securities”
94. Section 409.6-604(a), RSMo. (Cum. Supp. 2008), states:

If the commissioner determines that a person has engaged, is engaging, or is about to engage in an act, practice, or course of business constituting a violation of this act or a rule adopted or order issued under this act . . . the commissioner may:

- (1) Issue an order directing the person to cease and desist from engaging in the act, practice, or course of business or to take other action necessary or appropriate to comply with this act

95. Section 409.6-604(b), RSMo. (Cum. Supp. 2008), states:

An order under subsection (a) is effective on the date of issuance If a person subject to the order does not request a hearing and none is ordered by the commissioner within thirty days after the date of service of the order, the order becomes final as to that person by operation of law.

96. Section 409.6-604(c), RSMo. (Cum. Supp. 2008), reads in part as follows: “The final order may make final, vacate, or modify the order issued”
97. Section 409.6-604(d), RSMo. (Cum. Supp. 2008), states:

In a final order under subsection (c), the commissioner may impose a civil penalty up to one thousand dollars for a single violation or up to ten thousand dollars for more than one violation.

98. Section 409.6-604(e), RSMo. (Cum. Supp. 2008), states:

In a final order, the commissioner may charge the actual cost of an investigation or proceeding for a violation of this act These funds may be paid into the investor education and protection fund.

III. CONCLUSIONS OF LAW

Multiple Violations of Offering or Selling an Unregistered Security

99. Paragraphs 1 through 98 are incorporated by reference as though fully set forth herein.

100. Respondents offered or sold MR1 a security as described in paragraphs 8-15, 17-23, and 27-31, above.

101. Respondents offered or sold MR2 a security as described in paragraphs 46-61, above.

102. Respondents offered or sold MR3 a security as described in paragraphs 46-61, above.

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103. At all times relevant, records maintained by the Commissioner of Securities contained no registration, granted exemption or notice filing indicating the status as a "federal covered security" for the securities offered or sold to MR1, MR2 or MR3.

104. Respondents violated Section 409.3-301, RSMo. (Cum. Supp. 2008), when they offered or sold securities without those securities being registered, exempt or a federal covered security.

105. Respondents' actions in offering or selling unregistered securities constitute an illegal act, practice, or course of business and thus such actions are subject to the commissioner's authority under Section 409.6-604(a), RSMo. (Cum. Supp. 2008).

Multiple Violations By Respondent Duncan of Transacting Business as an Unregistered Agent

106. Paragraphs 1 through 98 are incorporated by reference as though fully set forth herein.

107. At all times relevant, records maintained by the Commissioner of Securities contained no registration for Respondent Duncan to transact business as an agent in Missouri.

108. Respondent Duncan violated Section 409.4-402(a), RSMo. (Cum. Supp. 2008), when he offered or sold securities to MR1, MR2, or MR3, as described in paragraphs 8-15, 17-23, 27-31, and 46-61, above, without being registered or exempt from registration as an agent.

109. Respondent Duncan's actions in transacting business as an unregistered agent constitute an illegal act, practice, or course of business and such actions are therefore subject to the commissioner's authority under Section 409.6-604(a), RSMo. (Cum. Supp. 2008).

Multiple Violations of Transacting Business as an Unregistered Broker-Dealer

110. Paragraphs 1 through 98 are incorporated by reference as though fully set forth herein.

111. At all times relevant, records maintained by the Commissioner of Securities contained no registration for any of the Respondents as a broker-dealer in Missouri.

112. Respondents violated Section 409.4-401(a), RSMo. (Cum. Supp. 2008), when they engaged in the business of effecting transactions in securities for the accounts of others without being registered or exempt from registration.

113. Respondents' actions in transaction business as an unregistered broker-dealer constitute an illegal act, practice, or course of business and such actions are therefore subject to the commissioner's authority under Section 409.6-604(a), RSMo. (Cum. Supp. 2008).

Multiple Violations of Making an Untrue Statement of a Material Fact in Connection with the Sale of a Security

114. Paragraphs 1 through 98 are incorporated by reference as though fully set forth herein.

115. In the connection with the offer or sale of a security, Respondents made an untrue statement of a material fact when they stated that investors would have an ownership interest in the properties.

116. The Respondents committed multiple violations of Section 409.5-501(2), RSMo. (Cum. Supp. 2008), when they made an

untrue statement of a material fact in connection with the offer or sale of a security.

117. Respondents' actions in making an untrue statement of a material fact constitute an illegal act, practice, or course of business and such actions are subject to the commissioner's authority under Section 409.6-604(a), RSMo. (Cum. Supp. 2008).

**Multiple Violations of Omitting to State a Material Fact in
Connection With an Offer or Sale of a Security**

118. Paragraphs 1 through 98 are incorporated by reference as though fully set forth herein.
119. In the connection with the offer or sale of a security, Respondents omitted to state a material fact necessary in order to make a statement made, in the light of the circumstances under which it was made, not misleading, when Respondents omitted to state:
- a. that a security offered was not a registered security in the State of Missouri, not exempt and not a federal covered security;
 - b. that Respondents were not registered as a broker-dealer in the State of Missouri; or
 - c. that Duncan was not registered as an agent in the State of Missouri.
120. The Respondents violated Section 409.5-501(2), RSMo. (Cum. Supp. 2008), when they omitted to state a material fact necessary to make statements made not misleading, in connection with the offer, sale or purchase of a security.
121. Respondents' actions in omitting to state a material fact necessary to make statements made not misleading, in connection with the offer, sale or purchase of a security, constitute an illegal act, practice, or course of business and thus such actions are subject to the commissioner's authority under Section 409.6-604(a), RSMo. (Cum. Supp. 2008).
122. This order is in the public interest and consistent with the purposes intended by the Missouri Securities Act of 2003. See Section 409.6-605(b), RSMo. (Cum. Supp. 2008).

IV. Order

NOW, THEREFORE, it is hereby ordered that Respondents, their agents, employees and servants, and all other persons participating in or about to participate in the above-described violations with knowledge of this Order are prohibited from:

- A. offering or selling securities in this state unless: (1) the security is a federal covered security; (2) the security, transaction, or offer is exempted from registration under Sections 409.2-201 to 409.2-203; or (3) the security is registered under this act.
- B. transacting business in this state as an agent unless registered under this act as an agent or is exempt from registration as an agent.
- C. transacting business in this state as a broker-dealer unless registered under this act as a broker-dealer or is exempt from registration.
- D. violating or materially aiding in any violation of Section 409.5-501(2), RSMo. (Cum. Supp. 2008), by, in connection with the offer or sale of securities, making an untrue statement of a material fact or omitting to state a material fact necessary in order to make the statement made, in the light of the circumstances under which it is made, not misleading.

IT IS FURTHER ORDERED that, pursuant to Section 409.6-604(d), RSMo. (Cum. Supp. 2008), the Commissioner will determine whether to grant the Enforcement Section's petition for an imposition of a civil penalty of up to ten thousand dollars (\$10,000) against each Respondent for multiple violations of Section 409.3-301, RSMo. (Cum. Supp. 2008), in a final order, unless Respondents request a hearing and show cause why the penalty should not be imposed.

IT IS FURTHER ORDERED that, pursuant to Section 409.6-604(d), RSMo. (Cum. Supp. 2008), the Commissioner will determine whether to grant the Enforcement Section's petition for an imposition of a civil penalty of up to ten thousand dollars (\$10,000) against each Respondent for multiple violations of Section 409.4-401(a), RSMo. (Cum. Supp. 2008), in a final order, unless Respondents request a hearing and show cause why the penalty should not be imposed.

IT IS FURTHER ORDERED that, pursuant to Section 409.6-604(d), RSMo. (Cum. Supp. 2008), the Commissioner will determine whether to grant the Enforcement Section's petition for an imposition of a civil penalty of up to ten thousand dollars (\$10,000) against Respondent Duncan for multiple violations of Section 409.4-402(a), RSMo. (Cum. Supp. 2008), in a final order, unless Respondent Duncan requests a hearing and shows cause why the penalty should not be imposed.

IT IS FURTHER ORDERED that, pursuant to Section 409.6-604(d), RSMo. (Cum. Supp. 2008), the Commissioner will determine whether to grant the Enforcement Section's petition for an imposition of a civil penalty of up to ten thousand dollars (\$10,000) against each Respondent for multiple violations of Section 409.5-501, RSMo. (Cum. Supp. 2008), in a final order, unless Respondents request a hearing and show cause why an award should not be imposed.

IT IS FURTHER ORDERED that, as the Enforcement Section has petitioned for an award for the costs of the investigation

against Respondents in this proceeding, the Commissioner will issue a final order pursuant to Section 409.6-604(e), RSMo. (Cum. Supp. 2008), awarding an amount to be determined after review of evidence submitted by the Enforcement Section, unless Respondents request a hearing and show cause why such an award should not be made.

SO ORDERED:

WITNESS MY HAND AND OFFICIAL SEAL OF MY OFFICE AT JEFFERSON CITY, MISSOURI THIS 12TH DAY OF JUNE, 2009.

ROBIN CARNAHAN
SECRETARY OF STATE

(Signed/Sealed)
MATTHEW D. KITZI
COMMISSIONER OF SECURITIES



State of Missouri
Office of Secretary of State

Case No. AP-09-24

IN THE MATTER OF:

THE DUNCAN GROUP;
THE DUNCAN GROUP, LLC;
THE DUNCAN GROUP INVESTMENTS, LLC;
THE DUNCAN GROUP EQUITY PARTNERS, LLC; and
AARON DUNCAN,

Respondents.

Serve all at:
390 South Woodsmill Road
Suite 160
Chesterfield, Missouri 63017

NOTICE

TO: Respondents and any unnamed representatives aggrieved by this Order:

You may request a hearing in this matter within thirty (30) days of the receipt of this Order pursuant to § 409.6-604(b), RSMo Supp. 2005, and 15 CSR 30-55.020.

Within fifteen (15) days after receipt of a request in a record from a person or persons subject to this order, the Commissioner will schedule this matter for a hearing.

A request for a hearing must be mailed or delivered, in writing, to:

Matthew D. Kitz, Commissioner of Securities
Office of the Secretary of State, Missouri
Kirkpatrick State Information Center
600 West Main Street, Room 229
Jefferson City, Missouri, 65102.

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of June, 2009, copies of the foregoing Order and Notice in the above styled case was **mailed by certified U.S. Mail, postage prepaid, to:**

The Duncan Group
390 South Woodsmill Road
Suite 160
Chesterfield, MO 63017

The Duncan Group, LLC
390 South Woodsmill Road
Suite 160
Chesterfield, MO 63017

The Duncan Group Investments, LLC
390 South Woodsmill Road
Suite 160
Chesterfield, MO 63017

The Duncan Group Equity Partners, LLC
390 South Woodsmill Road
Suite 160
Chesterfield, MO 63017

Aaron Duncan
390 South Woodsmill Road
Suite 160
Chesterfield, Missouri 63017

And hand delivered to:

Roumen Manolov
Deputy Chief Counsel
Securities Division

John Hale
Specialist

¹ Duncan told MR2 and MR3 that should they incur expenses due to surrender penalties in their current investments he would pay them twenty five percent (25%) interest on their investment for the first year to make up for the loss if they invested through Equity Trust Company.

² Equity Trust Company is purportedly a trust company that accepted tax-deferred funds from investors' qualified plans (IRA's, 401K's, etc.). Specifically, the qualified funds were "rolled-over" into The Duncan Group through the Equity Trust Company.

³ Many investors were paid a referral fee for referring others to invest in TDG.