
 *
IN THE MATTER OF: *
 *
ENDEAVOR GLOBAL PARTNERS *
CORP. *
 *
ENDEAVOR GLOBAL PARTNERS *
(HK) LTD. *
 *
DAVID MANNING FRESNE *
CRD. No. 1091992 *
 *
(“Respondents”) *
 *

**FINDINGS OF FACT,
 CONCLUSIONS OF LAW
 AND ORDER**

INTRODUCTION

This matter concerns alleged violations of Chapter 672a of the Connecticut General Statutes, the Connecticut Uniform Securities Act (“Act”), and Regulations of Connecticut State Agencies promulgated under the Act, including the offering and sale of unregistered securities and other related violations. The Respondents include Endeavor Global Partners Corporation (“EGP”), Endeavor Global Partners (HK) Ltd. (“EGP LTD”), and David Manning Fresne (“Fresne”), collectively “Respondents.” Based on the Findings of Fact and Conclusions of Laws set forth below, the Orders set forth below are imposed against the Respondents.

PROCEDURAL HISTORY

The Banking Commissioner is charged with the administration of Chapter 672a of the Connecticut General Statutes, the Act, and Sections 36b-31-2 to 36b-31-33, inclusive, of the Regulations of Connecticut State Agencies promulgated under the Act. The above-referenced matter was initiated after an investigation conducted by the Division of Securities and Business Investments (“Division”) of the Connecticut Department of Banking (“Department”) and upon charges brought by the Commissioner against each Respondent. On November 17, 2021, the Commissioner issued an Order to Cease and Desist, Order to Make Restitution, Notice of Intent to Fine and Notice of Right to Hearing (“Notice”). As a result of information obtained during the investigation, the Commissioner found reason to believe that Respondents violated certain provisions of the Act and Regulations as follows:

- (1) Respondents offered and/or sold unregistered securities to at least one investor in violation of Section 36b-16 of the Act, which forms the basis for an order to cease and desist to be issued against Respondents under Section 36b-27(a) of the Act, an order that Respondents make restitution under

Section 36b-27(b) of the Act and for the imposition of a fine upon Respondents under Section 36b-27(d) of the Act;

(2) Fresne’s conduct in connection with the offer, sale or purchase of any security, directly or indirectly employing a device, scheme or artifice to defraud, making an untrue statement of a material fact or omitting a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading, or engaging in an act, practice or course of business which operates or would operate as a fraud or deceit upon any person, constitutes a violation of Section 36b-4(a) of the Act, which forms the basis for an order to cease and desist to be issued against Fresne under Section 36b-27(a) of the Act, an order that Fresne make restitution under Section 36b-27(b) of the Act and for the imposition of a fine upon Fresne under Section 36b-27(d) of the Act; and

(3) Fresne transacted business as an agent of issuer EGP LTD in Connecticut absent registration in violation of Section 36b-6(a) of the Act, which forms a basis for an order to cease and desist to be issued against Fresne under Section 36b-27(a) of the Act and for the imposition of a fine upon Fresne under Section 36b-27(d) of the Act.

The Notice references an “Investor,” which, as described further in the Findings of Fact below, is a reference to Mike Sumpter, Alabama resident and President of Alabama Kentucky Energy, LLC (“AKE”). (DOB Ex. 13 at 7; Tr. at 164; DOB Ex. 4 at 1; Resp. Ex. 5 at 1). Sumpter, AKE and Respondents were parties to transactions relevant to this matter. (DOB Ex. 13 at 7; Tr. at 164; DOB Ex. 4 at 1; Resp. Ex. 5 at 1.)

The Notice was issued by certified mail, return receipt requested, to EGP, EGP LTD and Fresne. On December 8, 2021, Respondents filed an Appearance and Request for Hearing. On December 15, 2021, the Commissioner issued a Notification of Hearing and Designation of Hearing Officer, which was sent electronically to Eric Beckenstein, Hearing Officer, Elena Zweifler, Prosecuting Attorney for the Department, and David Manning Fresne on behalf of Respondents. (HO Ex. 1.) This matter was initially scheduled for a hearing on January 11, 2022. (Id.) After reasonable notice, a fully remote hearing was conducted on March 17, 2022, via videoconference using the Microsoft Teams platform, and held in accordance with Chapter 54 of the Connecticut General Statutes, Section 149 of the June Special Session Public Act 21-2, the Uniform Administrative Procedures Act (UAPA), and the Department of Banking Remote Hearing Guidelines available on the Department’s website at <https://portal.ct.gov/dob>.

Division staff attorney Elena Zweifler appeared as Prosecuting Attorney on behalf of the Department. Division employees Salvatore Cannata, Principal Examiner, and Meaghan Alarcon, Examiner, appeared as witnesses on behalf of the Department. Fresne, founder and Chief Executive Officer of EGP and President of EGP LTD, appeared as duly authorized member of EGP and EGP LTD, and pro se on his own behalf. (HO Ex. 2.) A certified court reporting service, BCT Reporting LLC, recorded and transcribed the hearing.

FINDINGS OF FACT

Background of the Investment Agreement David Manning Fresne (EGP) and Philip Sumpter (AKE)

1. EGP is a Delaware corporation formed on April 12, 2012 (DOB Ex. 12 at 3), with an address in the United States at 51 Rowayton Avenue, Rowayton, Connecticut, and addresses in China at 30/F Shanghai Square and 138 Middle Huai Hai Road, Shanghai, China (DOB Ex. 11 at 1; DOB Ex. 12). In a letter to the Department dated March 20, 2019, Fresne claimed, without providing any supporting evidence, “[EGP] seeks to provide operating capital to businesses seeking very substantial operating capital - in the many millions, if not tens of millions of dollars - needed to

jump start or expand their operations. [EGP] began transacting business approximately four (4) years ago and has conducted business in the Caribbean, the United Arab Emirates, Africa, China/Hong Kong and the United States. [EGP] is very much still in business” (DOB Ex. 7 at 2).

2. EGP LTD purports to be a Hong Kong corporation established on August 7, 2013, with a business address listed by Respondent as Unit 1010, Miramar Tower, 132 Nathan Road, TsimShaTsui, Hong Kong. (DOB Ex. 11 at 1; DOB Ex. 12 at 3, 7.) The Division was unable to establish whether EGP LTD was operational in 2016, when the transaction in this matter occurred. Cannata testified that EGP was an affiliate of EGP LTD, evidenced by EGP receiving and holding funds for both entities. “[T]hat’s where Mr. Sumpter’s monies were deposited [into EGP] . . . not into the [EGP LTD] account . . . we never found an [EGP LTD] account in the US” (Tr. at 62). Similarly, the Alabama Securities Commission expressed uncertainty whether EGP LTD was operational at the time of the transaction in this matter. (DOB Ex. 13 at 10; Tr. at 45.)¹
3. Fresne was integral to both entities as owner and control person, as Chief Executive Officer of EGP, and as President of EGP LTD. (Tr. at 33; DOB Ex. 13 at 6-7.) Fresne lived in Connecticut between August 2008 and January 2019, before relocating to Palm Beach, Florida. (DOB Ex. 8 at 2; DOB Ex. 9; DOB Ex. 13 at 7-11; Tr. at 115.)
4. Cynthia Antanaitis serves as Assistant Director of the Division and is authorized as custodian of its records. (DOB Ex. 2; DOB Ex. 3.) The Division maintains securities registration, securities exemption, notice filing computer records and internal computer records. (DOB Ex. 2; DOB Ex. 3.) Antanaitis certified that a search of the names “David Manning Fresne,” “David M. Fresne” and “David Fresne” revealed no currently or previously effective agent of issuer registrations for the period of January 1, 2013 to March 3, 2022. (DOB Ex. 3.) Antanaitis also certified that the key word search for “Endeavor” revealed no securities registration, securities exemption or securities notice filing records under the names “Endeavor Global Partners Corp.” or “Endeavor Global Partners (HK) Ltd.” for the period of January 1, 2013, to March 3, 2022. (DOB Ex. 2.) In short, at the time of the transactions underlying this matter, Fresne was not registered in any capacity nor was the investment contract security at issue exempt under the Act. (DOB Ex. 11 at 3-4; DOB Ex. 3.)
5. Fresne has former professional experience in the securities industry and was registered in Connecticut as broker dealer agent during the periods December 1987 – August 1999, and August 2004 – December 2007. (Tr. at 46-47; DOB Ex. 11 at 4; DOB Ex. 12 at 7.) Based on his experience, Fresne knew or should have known that the offer and sale of an unregistered security by an unregistered agent of issuer violates securities laws. Fresne’s actions in connection with the Agreement were not the result of inexperience or good faith error. (Tr. at 46-47; DOB Ex. 12 at 7.)
6. Beginning in 2012, Sumpter was seeking funding, including debt financing, to establish a coal mining operation in Kentucky. (Tr. at 165-166.) Sumpter was initially unsuccessful in his efforts to finance a mining operation. (DOB Ex. 13 at 9.) After locating a proposed site in 2015, Sumpter secured permits, and spent 2 million dollars, depleting his personal funds. (Tr. at 166.)

¹ “ASC Exhibit 31 shows a certificate of incorporation for [EGP LTD] issued on August 7, 2013. No evidence of the current bona fides or legal status of [EGP LTD] was introduced” (DOB Ex. 12 at 7). “On November 13, 2018, a review of the registration files of the Alabama Securities Commission revealed no registration for EGP LTD to offer and sell securities in Alabama, or any claim for exemption from registration in Alabama” (DOB Ex. 11 at 4).

7. As President of Alabama Kentucky Energy, LLC (“AKE”) in 2016, Sumpter decided he required capital of \$11,000,000 to develop a new coal mining operation in Kentucky. (Tr at 166-168; DOB Ex. 4 at 1; Resp. Ex. 5 at 1). Sumpter hired consultants to assist him in obtaining funding, meeting Fresne and Fresne’s friend Doug Queen in the process. (DOB Ex. 13 at 7-9; DOB Ex. 4 at 4; Tr. at 164-165.) Queen, who had experience in the coal mining business, was aware that EGP was seeking to offer financing while AKE was seeking funding for a coal mine operation. (Tr. at 166-168, 177, 202; DOB Ex. 11 at 7.) Queen believed Fresne would be in a position of funding deals. (Tr. at 197-198.) In hopes of a “deal,” Queen introduced Fresne to Sumpter, and in February 2016 Sumpter and Fresne discussed EGP LTD providing capital for an AKE mining operation. (Tr. at 164; DOB Ex. 12 at 4.) On March 11, 2016, Respondents offered and sold Sumpter an investment in the form of a secured promissory note. (DOB Ex. 1 at 2-3; Resp. Ex. 5 at 1; DOB Ex. 4 at 1.)

The Investment Agreement

8. Fresne provided Sumpter a commitment letter dated March 11, 2016, referencing “INVESTMENT IN ALABAMA KENTUCKY ENERGY, LLC” that included proposed financing (the “Agreement”). (DOB Ex. 4 at 1; Resp. Ex. 5 at 1.) On March 11, 2016, David M. Fresne, President, on behalf of EGP LTD, and Mike Sumpter, Philip M. Sumpter PMS, President, on behalf of AKE, executed the Agreement. (DOB Ex. 4 at 1, 16; Resp. Ex 5 at 1, 16; DOB Ex. 13 at 7.) The Agreement provides, in pertinent part:

We are pleased that Alabama Kentucky Energy, LLC . . . (hereinafter “AKE”) has accepted the principal terms of financing . . . offered by Endeavor Global Partners (HK) Ltd., a Hong Kong Corporation . . . or its or its affiliates, investors, assigns and/or designees (collectively hereinafter referred to as “EG”). This commitment letter agreement (“the Agreement”) will confirm EG’s and AKE’s acceptance of the terms and conditions of our financing engagement. (DOB Ex. 4 at 2; Resp. Ex. 5 at 2.)

WHEREAS, the parties desire and intend to work collectively to close the transaction in accordance to the terms and conditions herein. (DOB Ex. 4 at 1; Resp. Ex. 5 at 2.)

9. In order to receive funding under the Agreement, Sumpter agreed to pay an “Equity Participation Investment” of \$500,000 and a non-refundable “due diligence” fee of \$10,000, understanding that his initial \$500,000 was secure and refundable. (Resp. Ex. 6; DOB Ex. 11 at 2; DOB Ex. 13 at 8.) Having exhausted his personal financial resources, Sumpter ultimately obtained additional funds from his son and his son’s friend in furtherance of the Agreement. (Tr. at 166; DOB Ex. 13 at 8.)
10. EGP and EGP LTD were both owned and controlled by Fresne, who used the EGP bank account to advance his own financial interests. (Tr. at 44-46.) Fresne opened, owned and controlled an EGP bank account that he used to receive AKE funds. (Tr. at 44-46; DOB Ex. 9 at 10; DOB Ex. 11 at 3.) In support of this proposition, Cannata credibly testified that under the Agreement EGP functioned as an affiliate of EGP LTD, noticing that financing was “offered by [EGP LTD] . . . or its affiliates” (Emphasis added) (DOB Ex. 4 at 1; Resp. Ex. 5 at 1).
11. As used in Sections 33-840 to 33-842, inclusive, of the Connecticut General Statutes (titled “Business Combinations”), Section 33-840(1) of the Connecticut General Statutes defines the term “affiliate”, including the term “affiliated person”, to mean “a person that directly or

indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, a specified person.”

12. Fresne’s testimony that the Agreement was strictly between Hong Kong based EGP LTD and AKE is contradicted by the evidence. (Tr. at 34-35, 206, 212-213; DOB Ex. 8 at 1; DOB Ex. 12 at 4.) (i) On March 18, 2016, Sumpter, on behalf of AKE, wired \$510,000 to an EGP Wells Fargo Bank account, purportedly for the benefit of EGP LTD (DOB Ex. 9 at 10; DOB Ex. 11 at 3). Cannata credibly summarized, “[EGP] accepted Mr. Sumpter’s money. . . . [The funds] were not deposited into the [EGP LTD] account. . . .” (Tr. at 61-62), and Fresne signed the Agreement on behalf of [EGP]. (Tr. at 62.) “[T]he actions were all formed by Mr. Fresne on behalf of both of the entities” (Tr. at 45-46). (ii) The Agreement references an account name, “Endeavor Global Partners Corp.” rather than EGP LTD. (DOB Ex. 4 at 9; Resp. Ex. 5 at 9.) (iii) The Agreement provides, “AKE will not share with any third parties any documents provided by [EGP LTD] to AKE without prior written consent by [EGP LTD]” (DOB Ex. 4 at 1; Resp. Ex. 5 at 1). Consistent with the high level of transparency between AKE and EGP, the record supports a finding that EGP was not a third party, but rather an affiliate. (DOB Ex. 4 at 1; Resp. Ex. 5 at 1.)
13. Meaghan Alarcon, Financial Examiner for the Division, testified that as a common owner, Fresne controlled EGP and EGP LTD’s banking operations. (Tr. at 110-111.) The Division subpoenaed Wells Fargo Bank records for the period of January 1, 2015 through March 2019 and received a “Business Account Application” signatory card for Endeavor Global Partners Corp., Account #0673, effective March 11, 2014. (Tr. at 109-113.) The account includes only Endeavor Global Partners Corporation “sole owner” and David M. Fresne, “owner”. (Tr. at 109-110; Tr. at 45-46; DOB Ex. 8 at 3.) includes a mailing address for Endeavor Global Partners Corp. at 25 Burritts Landing S in Westport, also Fresne’s home address. (DOB Ex. 8 at 3; Tr. at 111.)
14. Wells Fargo bank records and transactions support the proposition that Fresne improperly used a portion of Investor [Sumpters] funds to pay his own personal expenses (DOB Ex. 9 at 10-11), and that Fresne and EGP were parties to the Agreement. (Tr. at 44-46.) On March 17, 2016, one day before the wire deposit of \$510,000 from Sumpter on behalf of AKE, the balance on Account #0673 was \$34,287.26. (DOB Ex. 9 at 10; Tr. at 115.) As confirmed by Second Addendum to Commitment Letter (DOB. Ex. 4 at 1; Resp. Ex. 5 at 1; Resp. Ex. 6), on March 18, 2016, Sumpter wired \$510,000 to Wells Fargo bank account #0673. (DOB Ex. 9 at 10.)
15. After Sumpter wired the funds to Wells Fargo bank account #0673 (DOB Ex. 9 at 10), Fresne began withdrawing cash from Account #0673 and spending these funds on, among other things, personal credit card bills, travel, retail and legal expenses (DOB Ex. 9 at 10; Tr. at 115). Fresne made multiple withdrawals from account #0673 to cover transactions for personal expenses, including the following: On March 18, 2016, the same day as the wire transmission, Fresne made 5 separate ATM cash withdrawals, each for \$203 (totaling \$1,015) from account #0673 while visiting Caneel Bay Resort, St. John, Virgin Islands. (DOB Ex. 9 at 10-11.) On March 18, 2016, Fresne made a payment of \$38,312.14 to American Express from account #0673. (DOB Ex. 9 at 11.) On March 21, 2016, Fresne paid \$50,000 for legal expenses to Shutts and Bowen LLP, a law firm (DOB Ex. 9 at 11), and he spent \$495.90 at the restaurant “Latitude,” St. Thomas, Virgin Islands (DOB Ex. 9 at 11). On March 21, 2016, Fresne charged \$372 in a retail sunglasses shop “Hot Looks USVI LLC,” St. Thomas, Virgin Islands. (DOB Ex. 9 at 11; Tr. at 117-122.) On April 1, 2016, Fresne issued a payment of \$2,039.37 to American Express, and on April 4, 2016, Fresne paid another \$3,868.12 to American Express for a total of more than \$44,000 in payments to American Express. (DOB Ex. 9 at 11, 17.)
16. Fresne did not challenge the sums or personal nature of the cited transactions, but instead admitted to personal spending from Account #0673. Fresne unsuccessfully attempted to justify

the spending, absent corroborating evidence, by reiterating that the Agreement named only AKE and EGP LTD and that he anticipated a windfall. (Tr. at 93; Tr. at 109-110; Tr. at 45-46; DOB Ex. 8 at 3.) “Did I spend money out of the the [EGP] account? I did but the contract was with [EGP LTD] . . . I believed that I had at that time hundreds of millions of dollars that were going to be delivered to me” (Tr. at 204). Fresne stated in his closing argument, “I – I spent the money, but I thought I was honoring the contract And then I found out I got duped” (Tr. at 222). Fresne’s testimony on these points is not credible.

17. Sumpter has never been to the Virgin Islands and only met Fresne in person once in 2016 when Fresne was in Alabama. (Tr. at 173-174.)

The Final Amended Agreement

18. Sumpter initially anticipated that he needed working capital of \$11,000,000 to invest and develop a mining company. (DOB Ex. 4 at 4-5; Resp. Ex. 5 at 4-5; DOB Ex. 11 at 2; Tr. at 166-168.) However, Sumpter was unable to deposit 10% of 11 million dollars. Sumpter testified, “I could not come up with the 1.1 I asked if we could lower the investment to 5 million to start up initially, and I was to put up 10 percent of that, which was 500,000” (Tr. at 168). The parties revised the initial agreement by reducing AKE’s investment from 1.1 million dollars to \$500,000 dollars and reducing financing from 11 million to 5 million dollars. (DOB Ex. 5; DOB Ex. 13 at 8-9.) Sumpter summed up, “I was to give \$510,000 dollars, and I will receive 5 million for that” (Tr. at 170).

19. On March 18, 2016, AKE wired \$500,000 to EGP plus a \$10,000 non-refundable due diligence fee. (DOB Ex. 5; Resp. Ex. 6; DOB Ex. 9 at 10.) A Second Addendum to the initial Agreement dated March 23, 2016, confirms AKE’s \$510,000 investment in return for financing of 5 million dollars from Endeavor. (DOB Ex. 5; Resp. Ex. 6.) “The Parties agree . . . principal loan amount is hereby adjusted to five million dollars vs. eleven million dollars (\$11,000,000)” (DOB Ex. 5; Resp. Ex. 6).

Testimony of Salvatore Cannata An Investment Contract Constitutes a Security

20. Salvatore Cannata, Principal Examiner for the Securities Division of the Department, has been employed by the Department for 35 years. (Tr. at 42.) Cannata referenced “the most common test” of whether a contract constitutes a security, as the *Howey* test, established by court cases for decades (Tr. at 65). An investment contract constitutes a security within the meaning of Section 36b-3(19) of the Act and widely accepted *Howey* test. See *SEC v. W. J. Howey Co.*, 328 U.S. 293, 66 S. Ct. 1100, 90 L. Ed. 1244 (1946); (Tr. at 65-66.)
21. Cannata testified that under *Howey*, several terms of the Agreement support a finding that Respondent offered and sold a security to AKE. The terms include “investment, promissory note . . . guaranteed” (Tr. at 62-67). “[T]he word ‘promissory note’ found in . . . our statute . . . is deemed to be a security” (Id.). Cannata testified that the Agreement references a security interest in “the second whereas clause that talks about a secured promissory note” (Tr. at 66). “WHEREAS, AKE desires to secure an [i]nvestment from EG in the gross amount of Eleven Million Dollars (\$11,000,000.00 USD) in the form of a secured promissory note” (DOB Ex. 4 at 4; Resp. Ex. 5 at 4). In short, the contract at issue involves Sumpter investing \$500,000 with an expectation of receiving “profit” in exchange, namely debt loan funding that was otherwise unavailable, which constitutes an investment contract and a security under Federal and state law. (See *SEC v. W. J. Howey Co.*, 328 U.S. 293, 66 S. Ct. 1100, 90 L. Ed. 1244 (1946); DOB Ex. 13 at 12-13).

***Alabama Securities Commission (ASC) Enforcement Action
Against Respondents***

22. The Alabama Securities Commission (“ASC”) functions in a similar manner to the Department in Connecticut. (Tr. at 43.) In 2018, the Division learned from ASC that Fresne sold an unregistered security to Sumpter in Alabama. (Tr. at 44.) A review of registration files of ASC on November 13, 2018, found that Fresne had no registration to offer/sell securities in Alabama, no registration as broker/dealer agent, as investment advisor representative, or as restricted agent (DOB Ex. 11 at 3-4), and in 2019, Fresne was the subject of a regulatory action by the ASC. (DOB Ex. 12 at 1.)
23. The ASC issued Administrative Order, Docket No. CD-2018-0026, including Recommendation of the Administrative Law Judge dated February 4, 2020, involving precisely the same transaction under consideration in Connecticut. (DOB Ex. 13.) The ASC concluded that neither EGP nor EGP LTD were registered with ASC, nor were they exempt from registration to issue or sell securities or investment contracts in Alabama. (DOB Ex. 11 at 2.) After a vote, on March 2, 2020, the ASC ordered that Respondents Endeavor Global Partners Corporation, Endeavor Global Partners (HK) Ltd. and David Fresne permanently cease and desist from further offers and/or sales of any security into, within, or from the state of Alabama. (DOB Ex. 13 at 1.)

Testimony of David Manning Fresne

24. Fresne testified that AKE solicited the Agreement from Respondents (and not vice-versa) and that he was therefore not a party to the Agreement that names AKE and EGP LTD. (Tr. at 93.) “A guy named Jim Riles approached me and asked if I would fund AKE. . . . I didn’t go knock on Sumpter’s door” (Tr. at 93). “[Sumpter] was soliciting an investment from me” (Tr. at 192). Fresne alleged that the Division failed to fully investigate [EGP LTD]. “[It] . . . did not even try to get any accounts of [EGP LTD]” (Tr. at 101). Fresne maintains that he never sold a security to AKE and that he never intended for this to occur. (Id.)
25. Fresne testified that he anticipated a massive influx of funds and never intended to place Sumpter’s funds at risk. (Tr. at 198-199.) Describing his business and the Agreement, Fresne testified, “we would put money up to lease instruments meaning standby letters of credit. They would be allegedly monetized at a deep discount and . . . then put into what’s called a buy-sell program where companies overseas buy standby letters of credit and sell them . . . they were giving me a fixed return. . . . [W]e were led to believe that at the time that I met Mr. Sumpter that we had a lot of money, and well over a billion dollars coming back to – and not all of it was mine, . . . but to the company” (Tr. at 198-199). “[I]t was alleged to me at the time that I had in excess of a billion dollars of capital that was built up through these investments. . . . [W]e had this money, and it was compounding, and compounding, that I had no reason to believe I did not have that money” (Tr. at 36). Fresne provided no credible evidence to support his unpersuasive assertions.
26. Fresne testified – unpersuasively – that largely unspecified individuals misled him into defaulting on the Agreement and that he is a victim lacking intent to violate the law. (Tr. at 37-38, 199-202.) Fresne cited an investment through EGP LTD with Anderson Financial Investments, “owned by a well-known guy in Dubai” (Tr. at 198-199). Fresne testified that he was duped by, among others, “Jeffrey Rinde of CKR [law firm] who now resides in Cambodia” (Tr. at 199). Fresne testified that he was a victim without malicious intent to commit securities fraud. “I got ripped off and my accounts were sandbagged with Anderson, and I lost my house in

a foreclosure. I have another house that's in a foreclosure that I'm about to lose. I have been wiped out financially . . . I agree that I owe Mr. Sumpter \$500,000 and I want to pay him back. I am trying to make arrangements to pay him back" (Tr. at 37-38).

27. Fresne introduced correspondence dated April 12, 2019, purportedly from Attorney Rinde at CKR Law. The letter states, in pertinent part, "per your request, this letter is to confirm Endeavor Global Partners (HK) Ltd. (EGP) is owed in excess of (\$1,600,000,000) from multiple transactions with a foreign party (Third Party). . . . [A] portion of these funds were transferred by wire to the CKR Law's account at Citi New York . . . the funds have not been credited to CKR Law's account . . . they were being held by certain U.S. government agencies pending their review . . . the hold on the funds has now been released and is expected to be credited to CKR Law's account in due course. The funds are expected to be available for distribution to Endeavor and its affiliates thereafter" (Resp. Ex. 7).
28. Fresne acknowledged that he withdrew funds from the account holding the AKE investment deposit of \$510,000, asserting that he understood Respondents would receive a larger influx of funds, due and owing at the time: "So yes. Did I spend the money out of [EGP's] account? I did, but the contract was with [EGP LTD] and we – I – I believe that I had at that time hundreds of millions of dollars that were going to be delivered to me" (Tr. at 204). "Fast forward . . . they said the money was held up at Homeland Security" (Tr. at 198-199).
29. Fresne's testimony attempting to exculpate himself is neither persuasive nor credible. Despite negotiating and signing the Agreement enabling Fresne to access and control AKE investment funds from his own EGP bank account, Fresne unpersuasively attempted to distance himself from the Agreement. Fresne's unsupported assertion that he anticipated more than a billion dollars from non-specified investments and "compounding" is non-persuasive. The language employed in the "CKR letter" fails to establish a credible basis for Fresne to reasonably anticipate the windfall suggested. The letter fails to include the source or sum of alleged funds, the governmental agency involved, the reason funds were held or when the "hold" was effective. Regardless of whether Fresne anticipated an influx of funds, he misrepresented the financial status of Respondents, and made the decision to improperly withdraw and misuse Sumpter's investment for personal ends. Finally, Fresne's assertion that he never intended to violate the law and that he is a victim is legally irrelevant. The governing securities provisions, Section 36b-16 of the Act, subsection (a) of Section 36b-4 of the Act and Section 36b-6(a) of the Act, do not consider the intent of the individual charged with a violation.

Fraud in Connection with the Offer and Sale of a Security

30. Viewed under *Howey*, Sumpter's investment of \$500,000 in return for five-million dollars from EGP LTD to fund his mine, constitutes the sale of a security in the form of an investment contract between Respondents and AKE. See *SEC v. W. J. Howey Co.*, supra, 328 U.S. 293; (Tr. at 65-66). On March 4, 2020, the Alabama Securities Commission considering the same transaction at issue here and adopted the findings of Administrative Law Judge James Jerry Wood in a permanent Cease and Desist order against Respondents (DOB Ex. 12 at 13; DOB Ex. 13 at 1). Wood found that misrepresentations and non-disclosures led to the "debt loan" investment contract, sale of a security (DOB Ex. 12 at 9-10), and that Fresne was an unregistered agent of issuer that sold an unregistered security to AKE. (DOB Ex. 13 at 10.)
31. Similarly, in the matter under consideration, Fresne misrepresented the financial viability of EGP LTD to Sumpter leading to the sale of an unregistered, non-exempt security to AKE. (Tr. at 50-

51.)² Fresne misled Sumpter to believe that Respondents had successfully handled at least 4 investment contract deals in the past, including a buffalo ranch in Wyoming or Colorado and rental properties in Miami, Florida (Tr. at 170-171), failing to explain that none of the four deals he ascribed to EGP under his leadership led to funding (DOB 12 at 8; Tr. at 170-171). Sumpter credibly testified that Queen pressured him to enter the Agreement: “I was told that if I would hurry up and send \$500,000, that the money was already there and it was already in the US and it would be available for the initial mine startup, the 5 . . . \$5 million” (Tr. at 195).

32. Since March 1, 2015, EGP has remained “inactive” based on failure to pay franchise taxes. (DOB Ex. 11 at 2.) Since June 29, 2017, EGP has held a “void corporate status”. (DOB Ex. 13 at 6, 10.)³ Neither EGP nor EGP LTD have ever been registered under the Act. (Tr. at 53-54; DOB Ex 2). “The records in Delaware as of June 29, 2017, . . . [reflect EGP] having a ‘void’ and ‘tax delinquent’ status with taxes due of \$407,252.56” (DOB Ex. 13 at 10). Fresne knew or should have known Respondents were unable to honor the terms of the Agreement and therefore fraudulently entered the Agreement on March 11, 2016, that obligated AKE to pay EGP a non-refundable fee of \$10,000 and then a \$500,000 investment. (DOB Ex. 12 at 5.) A letter from Fresne dated July 15, 2017, acknowledges a debt of \$500,000 plus interest owed to AKE by EGP LTD. (DOB Ex. 12 at 7.)
33. Respondent Fresne led Sumpter to believe that the Agreement exposed AKE to little or no financial risk because the investment of \$500,000 was refundable. If EGP elected not to close altogether, then the “investment loan” would be refundable and EGP was required to retain balances greater than the investment loan sum until the first distribution. If AKE elected not to close for any “commercially reasonable reason” the loan would be refunded. (Tr. at 75; DOB Ex. 4 at 3-4; Resp. Ex. 5 at 3-4.) But for perceived low risk, Sumpter would not have entered the Agreement. (Tr. at 172; DOB Ex. 4; DOB Ex. 5; DOB Ex. 11 at 2-4.) Sumpter expected that his investment was secure in Wells Fargo account #0673; if either party elected not to go forward, then after 90 days (June 16, 2016), the money would be refunded plus 15% interest. (Tr. at 115-117, 172.)
34. On March 17, 2016, one day prior to the wire from Sumpter of \$510,000, the balance on Wells Fargo business account x0673 was \$34,287.26. Fresne violated the Agreement by failing to retain \$500,000 in the account. (Tr. at 117; DOB Ex. 9.) On March 18, 2016, the closing balance on the same Wells Fargo business account x0673 was \$504,691.20 (Tr. at 115). On March 31, 2016, business account x0673 had a balance of \$49,730. (DOB Ex. 9 at 12.) On April 1, 2016, the balance on account x0673 was \$44,619. (DOB Ex. 9 at 17). On June 16, 2016, at the 90-day mark, the balance on account x0673 was \$25,700.32, in violation of the Agreement. (DOB Ex. 9; Tr. at 118.)

CONCLUSIONS OF LAW

Jurisdiction and Procedure

The Banking Commissioner, through the Securities and Business Investments Division of the Department of Banking, conducted an investigation providing reason to believe that Respondents violated provisions of the Act and therefore the Commissioner has the authority to issue an order to cease and desist pursuant to Section 36b-27(a) of the Act. As a result of the Investigation, the Commissioner also

² In an ASC Administrative Order dated February 4, 2020, ALJ Jerry Wood aptly describes how Fresne engaged in fraud in connection with the offer and sale of a security, namely the investment contract with AKE.

³ “Fresne’s use of a ‘void’ corporate entity as the recipient of the Equity Participation Investment funds from Sumpter and his subsequent spending of those funds is problematic” (DOB Ex. 12 at 7).

has reason to order that Respondents make restitution pursuant to Section 36b-27(b) of the Act, and finally the Commissioner has the authority to impose a fine upon Respondents pursuant to Section 36b-27(d) of the Act.

***Statutory Basis for Order to Cease and Desist,
Order to Make Restitution and Order Imposing Fine***

Violation of Section 36b-16 of the Act
Offer and/or Sale of Unregistered Securities

Section 36b-16 of the Act provides that:

No person shall offer or sell any security in this state unless (1) it is registered under sections 36b-2 to 36b-34, inclusive, (2) the security or transaction is exempted under section 36b-21, or (3) the security is a covered security provided such person complies with any applicable requirements in subsections (c), (d) and (e) of section 36b-21.

The investment contract between Respondents and AKE constitutes a security. Under *Howey*, a transaction is an investment contract when there is an investment of money; there is an expectation of profits from the investment; the investment of money is in a common enterprise, and any profit comes from the efforts of a promoter or third party. See *SEC v. W. J. Howey Co.*, supra, 328 U.S. 298-299 (1946); (Tr. at 65-66). The record reveals that Sumpter was unable to obtain financing for a mine until reaching an Agreement with Respondent despite efforts spanning years (Tr. at 165-166). “We’ve been working since 2012 . . . finding a mining operation . . . it was about 2015 before we found the property . . . at that point I had exhausted all of my funds. . . . I needed funding to start the operation” (Tr. at 165-166). Significantly in this analysis, but for the efforts of unnamed others involved with the Respondent, Sumpter would not have obtained five million dollars. (DOB Ex. 12 at 9-10.) Finally, Sumpter’s only obligation in this scenario was to pay a sum of money for financing, leaving unnamed others to perform and deliver profits. (Id.; DOB Ex. 4; Resp. Ex. 5.)

On March 11, 2016, Respondents offered and sold a security interest in the form of an investment contract to Sumpter (AKE) in Alabama. Respondents offered to give Sumpter the ability to finance his coal mine with 5 million dollars for AKE’s investment of \$500,000 plus a due diligence fee as per the Agreement. As certified, the Agreement included an unregistered security, whereby the funds that purchased the security were deposited into an Endeavor account controlled by Fresne. (Tr. at 219.)

Respondents Endeavor Global Partners Corp., Endeavor Global Partners (HK) LTD., and David Manning Fresne each committed at least one violation of Section 36b-16 of the Act, carrying a maximum fine of \$100,000 per violation, with the offer and sale of at least one unregistered security to at least one investor, which forms the basis for an order to cease and desist against Respondents under Section 36b-27(a) of the Act, an order that Respondents make restitution under Section 36b-27(b) of the Act, and for imposition of a fine upon Respondents under Section 36b-27(d) of the Act.

Violation of Section 36b-4(a) of the Act by Respondent Fresne
Fraud in Connection with the Offer and Sale of any Security

Subsection (a) of Section 36b-4 of the Act provides that:

No person shall, in connection with the offer, sale or purchase of any security, directly or indirectly: (1) Employ any device, scheme or

artifice to defraud; (2) make any untrue statement of a material fact or 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) engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

Respondent Fresne pitched an investment to Sumpter as low risk, whereby Sumpter was entitled to a full refund of his initial investment of \$500,000 in EGP with an expectation of “profits from the work of others,” namely 5 million dollars. But for misrepresentations from Fresne that the Agreement was low risk, Sumpter would not have entered into the Agreement. Fresne failed to reveal the defunct nature of EGP and EGP LTD prior, during, or after receiving and drawing upon AKE’s investment. After the deposit from AKE on March 18, 2016, Fresne began using the funds to pay personal expenses, including bills, travel and retail (Tr. at 116-117). After March 18, 2016, Fresne failed to reveal to AKE that the account balance remained below \$500,000.

Respondent Fresne committed at least one violation of Section 36b-4(a) of the Act, carrying a maximum fine of \$100,000 per violation, by engaging in fraud in connection with the offer and sale of at least one security to at least one Investor which forms the basis for an order to cease and desist against Respondent under Section 36b-27(a) of the Act, an order that Respondent make restitution under Section 36b-27(b) of the Act, and for imposition of a fine upon Respondent under Section 36b-27(d) of the Act.

Violation of Section 36b-6(a) of the Act by Fresne
Unregistered Agent of Issuer Activity

Section 36b-6(a) of the Act provides, in pertinent part, that:

No person shall transact business in this state as a broker-dealer unless such person is registered under sections 36b-2 to 36b-34, inclusive. . . .
No individual shall transact business as an agent in this state unless such individual is (1) registered as an agent of the broker-dealer or issuer whom such individual represents in transacting such business, or (2) an associated person who represents a broker-dealer in effecting transactions described in subdivisions (3) and (4) of Section 15(i) of the Securities Exchange Act of 1934. . . .

Respondent David Manning Fresne violated the Act by engaging in unregistered agent of issuer activity in Connecticut, a violation of Section 36b-6(a) of the Act, carrying a maximum fine of \$100,000 per violation, which forms a basis for an order to cease and desist to be issued against Respondent under Section 36b-27(a) of the Act and the imposition of a fine upon Fresne under Section 36b-27(d) of the Act.

ORDER

Having read the record, I hereby **ORDER**, pursuant to Sections 36b-27(a), 36b-27(b) and 36b-27(d) of the Act, that:

1. The Order to Cease and Desist issued on November 17, 2021, against Endeavor Global Partners Corp., its employees, officers, representatives, affiliates and successors in interest, **remains in effect** and becomes **PERMANENT** with respect to violating provisions of the Act and Regulations, specifically: offering and selling unregistered securities in or from Connecticut;
2. The Order to Cease and Desist issued on November 17, 2021, against Endeavor Global Partners (HK) Ltd., its employees, officers, representatives, affiliates and successors in interest, **remains in effect**

and becomes **PERMANENT** with respect to violating provisions of the Act and Regulations, specifically: offering and selling unregistered securities in or from Connecticut;

3. The Order to Cease and Desist issued on November 17, 2021, against David Manning Fresne from directly or indirectly violating the provisions of the Act and Regulations, **remains in effect** and becomes **PERMANENT** with respect to violating provisions of the Act and Regulations, including, without limitation: (1) offering and selling unregistered securities in or from Connecticut; (2) in connection with the offer, sale or purchase of any security, directly or indirectly employing any device, scheme or artifice to defraud, making an untrue statement of a material fact or omitting 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 engaging in an act, practice or course of business which operates or would operate as a fraud or deceit upon any person; and (3) transacting business as an unregistered agent of issuer in Connecticut;
4. The Order to Make Restitution dated November 21, 2021, **remains in effect** and becomes **PERMANENT** against Respondents on September 21, 2022. Within thirty (30) days from the date of this Order to Make Restitution, Respondents shall reimburse Investor Mike Sumpter \$500,000 **plus interest**. Such restitution shall be made by certified check and shall be sent by certified mail, return receipt requested, to the Investor. Within forty-five (45) days from the date of this Order to Make Restitution, Respondents shall provide the Division with proof in the form of copies of the certified check and the return receipt required;
5. A **FINE** of One Hundred Thousand Dollars (\$100,000) is imposed upon Endeavor Global Partners Corp., to be remitted to the Department of Banking by electronic funds transfer, cashier's check, certified check or money order, made payable to "Treasurer, State of Connecticut", no later than forty-five (45) days from the date this Order is mailed;
6. A **FINE** of One Hundred Thousand Dollars (\$100,000) is imposed upon Endeavor Global Partners (HK) LTD., to be remitted to the Department of Banking by electronic funds transfer, cashier's check, certified check or money order, made payable to "Treasurer, State of Connecticut", no later than forty-five (45) days from the date this Order is mailed;
7. A **FINE** of Three Hundred Thousand Dollars (\$300,000) is imposed upon David Manning Fresne, to be remitted to the Department of Banking by electronic funds transfer, cashier's check, certified check or money order, made payable to "Treasurer, State of Connecticut", no later than forty-five (45) days from the date this Order is mailed; and
8. This Order shall become effective when mailed.

Dated at Hartford, Connecticut,
September 21, 2022.

_____/s/_____
Jorge Perez
Banking Commissioner

CERTIFICATION

I hereby certify that on this 21st of September 2022, I caused the foregoing Findings of Fact, Conclusions of Law and Order to be mailed by certified mail, return receipt requested, to: David Manning Fresne, 306 Resort Lane, Palm Beach Gardens, Florida 33418, Certified Mail No. 7019 1640 0000 1584 4787; Endeavor Global Partners Corp., 306 Resort Lane, Palm Beach Gardens, Florida 33418, Certified Mail No. 7019 1640 0000 1584 4794; Endeavor Global Partners Corp., 151 Rowayton Avenue, Norwalk, Connecticut 06853, Certified Mail No. 7019 1640 0000 1584 4800; Endeavor Global Partners (HK) Ltd., 306 Resort Lane, Palm Beach Gardens, Florida 33418, Certified Mail No. 7019 1640 0000 1584 4817. I further certify that on the same date a hard copy of the Findings of Fact, Conclusions of Law and Order was hand delivered to the office of Attorney Elena Zweifler, State of Connecticut, Department of Banking, Securities and Business Investments Division, 260 Constitution Plaza, Hartford, Connecticut. Further, an e-mail attaching a copy of the Findings of Fact, Conclusions of Law and Order was sent to David Manning Fresne and to Attorney Zweifler to the e-mail addresses on record.

_____/s/_____
Carmen M. Calderon
Secretary