

STATE OF WASHINGTON  
DEPARTMENT OF FINANCIAL INSTITUTIONS  
SECURITIES DIVISION

IN THE MATTER OF DETERMINING ) Order Number S-09-356-10-SC01  
Whether there has been a violation of the )  
Securities Act of Washington by: ) STATEMENT OF CHARGES AND NOTICE  
) OF INTENT TO ENTER ORDER TO CEASE  
) AND DESIST, TO CHARGE COSTS, AND  
Dorothy Of Oz, LLC; Alpine Pictures, ) TO IMPOSE FINES  
Inc.; Neil Kaufman; Michael Bergh; )  
Randy Lacey; Michael Luther; Walter )  
Price; Shawn Syre )

Respondents

THE STATE OF WASHINGTON TO: Dorothy Of Oz, LLC;  
Alpine Pictures, Inc.;  
Neil Kaufman;  
Michael Bergh;  
Randy Lacey;  
Michael Luther;  
Walter Price;  
Shawn Syre

**STATEMENT OF CHARGES**

Please take notice that the Securities Administrator of the State of Washington has reason to believe that Respondents, Dorothy Of Oz, LLC, Alpine Pictures, Inc., Neil Kaufman, Michael Bergh, Randy Lacey, Michael Luther, Walter Price, Shawn Syre, have each violated the Securities Act of Washington and that their violations justify the entry of an order of the Securities Administrator under RCW 21.20.390 against each to cease and desist from such violations. The Securities Administrator finds as follows:

STATEMENT OF CHARGES AND NOTICE OF INTENT TO ENTER ORDER TO CEASE AND DESIST, TO CHARGE COSTS, AND TO IMPOSE FINES

1

DEPARTMENT OF FINANCIAL INSTITUTIONS  
Securities Division  
PO Box 9033  
Olympia, WA 98507-9033  
360-902-8760

1 **TENTATIVE FINDINGS OF FACT**

2 Respondents

3 1. Dorothy of Oz, LLC (Dorothy) is a California limited liability company doing  
4 business as Box Office Productions III. Dorothy’s principal place of business is 3033 North  
5 Avon Street, Burbank, CA 91504. For much of the period relevant to this Statement of Charges,  
6 Dorothy’s principal place of business was 3500 West Magnolia Boulevard, Burbank, CA 91505.

7 2. Alpine Pictures, Inc. (Alpine) is a California corporation. Alpine’s principal place  
8 of business is 3500 West Olive Avenue, Suite 300, Burbank, CA 91505. For much of the period  
9 relevant to this Statement of Charges, Alpine’s principal place of business was 3033 North Avon  
10 Street, Burbank, CA 91504. Alpine produces and distributes films financed by Dorothy.

11 3. Neil Kaufman (Kaufman) is the managing member and a salesperson of Dorothy.

12 4. Michael Bergh is a salesperson of Dorothy.

13 5. Randy Lacey is a salesperson of Dorothy.

14 6. Michael Luther is a salesperson of Dorothy.

15 7. Walter Price is a salesperson of Dorothy.

16 8. Shawn Syre is a salesperson of Dorothy. Syre is an “associate producer” with  
17 Alpine.

18 Nature of the Offering

19 9. In or around August of 2006, Dorothy began an offering of its limited liability  
20 company interests in an effort to raise \$20,000,000 to fund the production of an animated motion  
21 picture entitled *Dorothy of Oz* and based upon a book by Roger S. Baum. Dorothy retained the  
22 right to use investors’ funds to fund a project other than *Dorothy of Oz* if Dorothy determined  
23 that it was in its best interests to do so. *Dorothy of Oz* is anticipated to be released in 2011.  
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1           10.     In or around July of 2009, Dorothy expanded its offering to \$24,000,000 after  
2 selling \$17,789,665 of its interests.

3           11.     Dorothy has offered or sold its interests in at least the following states: Alabama,  
4 California, Pennsylvania, Texas, and Washington.

5           12.     Between October of 2006 and March of 2010, Dorothy offered and sold at least  
6 \$736,390 worth of interests in Dorothy to at least thirty one Washington residents.

7           13.     The interests offered and sold to Washington residents were valued at \$1 each.  
8 Dorothy's Private Placement Memorandum (PPM) provided a minimum subscription of 20,000  
9 interests. However, at least ten Washington investors purchased smaller amounts of interests.

10          14.     According to Dorothy's PPM, sales of interests in Dorothy were limited to  
11 investors who qualified as "accredited investors" as that term is defined in Rule 501(a) of  
12 Regulation D. However, Dorothy has sold its interests to Washington residents who did not  
13 qualify as accredited investors at the time of investment. Moreover, many of these non-  
14 accredited investors were not sophisticated under Rule 506(b)(2)(ii) of Regulation D as they had  
15 minimal investment experience when they invested in Dorothy and had never made investments  
16 similar to their investments in Dorothy.

17          15.     Under the terms of Dorothy's PPM, twenty two percent of the offering's gross  
18 proceeds were to be retained by Kaufman as a "management fee." Expenses related to Dorothy's  
19 offering were to be borne by Kaufman, not by Dorothy. The PPM does not address whether  
20 Kaufman may use his management fee to pay expenses related to Dorothy's offering. The  
21 remaining seventy eight percent of the offering's gross proceeds were to be used to co-finance  
22 the film's production by payment to Alpine of costs incurred by Alpine in connection with the  
23 film's production.

24          16.     After payment of certain costs, Dorothy was to receive from Alpine 120% of all  
25 amounts paid to Alpine to fund production. Dorothy was also to receive fifty percent of

1 “additional revenues” derived from the film by Alpine and/or any film sales agent or distributor.  
2 These “additional revenues” include anticipated royalties from licensing. Ninety nine percent of  
3 these profits due to Dorothy were to be allocated to investors in proportion to their investment in  
4 Dorothy. The remaining one percent was to be allocated to Kaufman.

5 17. Dorothy solicited sales of interests through unsolicited phone calls to Washington  
6 residents with whom a pre-existing relationship did not exist (“cold calls”). Representatives of  
7 both Dorothy and Alpine made cold calls. Kaufman cold called at least three Washington  
8 residents to solicit investment in Dorothy. Michael Bergh, Randy Lacey, Michael Luther, Walter  
9 Price and Shawn Syre each cold called at least one Washington resident to solicit investment in  
10 Dorothy.

11 18. The solicitation process varied after the initial cold call. Some Washington  
12 investors received information and advertising packets and offering materials prior to agreeing to  
13 invest in Dorothy. These packets included descriptions of the intended film and the book upon  
14 which the film is based, information about key persons working on the project, and profit  
15 projections. These packets also included information about the prior box office success of certain  
16 animated films and the revenue generated by rentals and sales of DVDs of animated films.

17 19. Other Washington investors did not receive any material until they had agreed to  
18 invest in Dorothy, after which they received a copy of Dorothy’s PPM. Some Washington  
19 investors had multiple phone conversations with Dorothy’s representatives prior to investing.

20 20. Washington residents invested by submitting personal or cashier’s checks to  
21 Dorothy, by wire transfer, and by purchases through their Individual Retirement Accounts  
22 (IRAs) at Sterling Trust Company.  
23  
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1 Internet Offers

2 21. Dorothy maintained the website, www.dorothyofthemovie.com (website). For  
3 a material portion of the offering, pages on the website concerning investing in Dorothy were  
4 available to the general public. Potential investors were able to view a page on the website from  
5 which they could print a copy of Dorothy's subscription agreement.

6 22. Potential investors could view a page on the website that included instructions on  
7 how to invest in Dorothy. The website advised potential investors that they could invest by  
8 personal or cashier's check, or by "simply utilizing [the potential investor's] existing IRA or  
9 401k without penalty."

10 Enforcement Actions by other Jurisdictions against Dorothy

11 23. On or around May 30, 2007, the Pennsylvania Securities Commission (PSC)  
12 issued a Summary Order to Cease and Desist against Dorothy. The PSC found that Dorothy had  
13 violated the securities registration provisions of the Pennsylvania Securities Act of 1972. On or  
14 around April 15, 2008, the PSC and Dorothy settled this matter. Dorothy agreed to be barred  
15 from offering or selling securities in Pennsylvania for one year from the date of the settlement  
16 and for one additional year if Dorothy did not retain securities counsel who would either register  
17 Dorothy's securities with the PSC or provide an opinion stating that Dorothy's securities were  
18 exempt from registration with the PSC. Dorothy further agreed to pay the PSC's investigative  
19 and legal costs.

20 24. On February 9, 2009, the Texas State Securities Board (TSSB) entered an Agreed  
21 Cease and Desist Order and Order Assessing Administrative Fine against Dorothy and Kaufman.  
22 The TSSB found that Dorothy and Kaufman had violated the Texas Securities Act's securities  
23 registration, securities salespersons registration, and anti-fraud provisions.

24 25. On October 26, 2009, the Alabama Securities Commission (ASC) entered a Cease  
25 and Desist Order against Dorothy and Walter Price. The ASC found that Dorothy and Price had

1 violated the Alabama Securities Act’s securities registration and securities salesperson  
2 registration provisions. On December 11, 2009, the ASC issued a Final Order against Dorothy  
3 and Price after they failed to respond to the Cease and Desist Order.

4 26. On or around November 23, 2009, the California Department of Corporations  
5 (CDC) entered a Desist and Refrain Order against Dorothy and Kaufman. The CDC found that  
6 Dorothy and Kaufman had violated the California Corporations Code’s securities registration  
7 and anti-fraud provisions.

8 Enforcement Actions by other Jurisdictions against Alpine

9 27. In 1999, the California Department of Corporations obtained a permanent  
10 injunction against Alpine for violations of the California Corporations Code’s securities  
11 registration and anti-fraud provisions.

12 28. The securities regulators of Delaware, Indiana, and Michigan have each entered  
13 cease and desist orders against Alpine. These regulators found that Alpine had violated each  
14 state’s securities registration provisions.

15 29. In 1999, the Australian Securities and Investments Commission obtained court  
16 orders restraining a representative of Alpine from offering securities in Australia. The  
17 representative had been cold calling Australians to solicit investments.

18 Misrepresentations and Omissions

19 30. At least one Washington investor received profit projections forecasting a  
20 minimum return on investment of 162%. This investor also received materials featuring the  
21 covers of DVDs of highly successful animated films such as *Toy Story*, *Finding Nemo*, and *The*  
22 *Incredibles*, and headed “Dorothy of Oz Box Office Productions III LLC. presents...” These  
23 materials did not include or refer to any disclaimer about the projections’ accuracy. The  
24 materials did not provide a reasonable basis for such projections or comparisons or include the  
25 assumptions on which the projections and comparisons were made.

1           31.     At least one Washington investor received an email from Shawn Syre prior to  
2 investing. The e-mail stated that “digital animation” had been the top performing genre in the  
3 film industry, “averaging over \$280 million across the board,” and that DVDs of digitally  
4 animated films had been “top sellers” among DVDs for the preceding five years. The email also  
5 stated that investing in Dorothy provided “unlimited upside potential” and “quarterly  
6 distributions in perpetuity.” The e-mail did not include any disclaimer about the accuracy of  
7 these projections, provide a reasonable basis for the projections, explain that there were no  
8 assurances that *Dorothy of Oz* would perform as well as the films referenced in the e-mail, or  
9 explain that most of the animated films referenced in the email were produced and distributed by  
10 major film studios with resources considerably greater than those available to Dorothy, such as  
11 the Disney Company and DreamWorks.

12           32.     In the e-mail described in paragraph thirty one of the Tentative Findings of Fact,  
13 Syre also stated that investments in Dorothy were “100% Tax Deductible” under the Independent  
14 Film Small Business Job Creation Act of 2004 (Act). The e-mail did not list or refer to the  
15 requirements that a film production must meet for its investors to claim the tax deduction  
16 afforded by the Act and codified at 26 USC 181. The e-mail also did not discuss the risk that  
17 *Dorothy of Oz* might not qualify as an eligible film production under 26 USC 181 and that  
18 investors therefore might not be able to write off their investments in Dorothy.

19           33.     A page on Dorothy’s website headed “Top 10 Animation Films” listed ten  
20 animated films, each of which earned at least \$403,476,931 worldwide. The page indicated that  
21 Dorothy’s “creative team” had been involved in “7 of these top 10 animated films.” This page  
22 did not explain how members of Dorothy’s creative team had been involved in the seven  
23 successful films, nor did it explain that there was no assurance that *Dorothy of Oz* would be  
24 similarly successful.

1 34. A page on Dorothy’s website headed “Marketing & Merchandising” featured  
2 information about retail sales figures achieved by the Disney Company. The page explained that,  
3 in 2007, Disney and its licensees were likely to earn \$13 billion in retail sales. The page further  
4 explained that a “top-selling franchise” can easily earn \$100 million in licensing deals and that  
5 the *Star Wars* films had earned \$9 billion from merchandising. The page did not explain that  
6 there was no assurance that *Dorothy of Oz* would have similar success in merchandising.

7 35. Respondents failed to disclose the enforcement actions taken against Dorothy and  
8 others described in paragraphs twenty three, twenty five, and twenty six of the Tentative  
9 Findings of Fact. Each of these enforcement actions was not disclosed to at least one investor  
10 prior to his or her investment in Dorothy.

11 36. Respondents failed to disclose the enforcement actions taken against Alpine  
12 described in paragraphs twenty seven through twenty nine of the Tentative Findings of Fact to at  
13 least two investors prior to their investments in Dorothy.

14 Registration Status

15 37. On November 14, 2006, the Securities Division received a Notice of Exempt  
16 Offering of Securities filed on behalf of Dorothy pursuant to Section 18(b)(4)(D) of the  
17 Securities Act of 1933 and WAC 460-44A-506. Pursuant to WAC 406-44A-506, Respondents  
18 were required to comply with the conditions of Regulation D.

19 38. Alpine Pictures is not currently registered as a broker-dealer in the State of  
20 Washington and has not previously been so registered.

21 39. Neil Kaufman, Michael Bergh, Randy Lacey, Michael Luther, Walter Price and  
22 Shawn Syre are not currently registered as securities salespersons or broker-dealers in the State of  
23 Washington and have not previously been so registered.



1 **CONCLUSIONS OF LAW**

2 Based on the Tentative Findings of Fact, the following Conclusions of Law are made:

3 1. The offer or sale of limited liability company interests in Dorothy of Oz, LLC in  
4 the State of Washington described above constitutes the offer or sale of a security as defined at  
5 RCW 21.20.005(10) and (12).

6 2. The unsolicited phone calls and website described above violate the prohibition of  
7 general solicitation and general advertising of Regulation D, Rule 502(c). Therefore,  
8 Respondents failed to meet the requirements to claim the exemption available under Rule 506 of  
9 the Securities Act of 1933 and WAC 460-44A-506.

10 3. The offer or sale of said securities are in violation of RCW 21.20.140 because no  
11 registration for such offer or sale is on file with the Securities Administrator and no valid claim  
12 of exemption under WAC 460-44A-506 exists.

13 4. Alpine has violated RCW 21.20.040 by offering or selling said securities while  
14 not registered as a broker-dealer in the State of Washington.

15 5. Neil Kaufman, Michael Bergh, Randy Lacey, Michael Luther, Walter Price and  
16 Shawn Syre have violated RCW 21.20.040 by offering or selling said securities while not  
17 registered as securities salespersons or broker-dealers in the State of Washington.

18 6. Respondents violated RCW 21.20.010 because, as set forth paragraphs thirty  
19 through thirty six of the Tentative Findings of Fact, Respondents, in connection with the offer or  
20 sale of securities, made misstatements of material facts or omitted to state material facts  
21 necessary in order to make the statements made, in light of the circumstances under which they  
22 were made, not misleading.

1 **NOTICE OF INTENT TO ORDER THE RESPONDENTS TO CEASE AND DESIST**

2 Based on the above Tentative Findings of Fact and Conclusions of Law, the Securities  
3 Administrator intends to order, pursuant to RCW 21.20.390(1), that Dorothy Of Oz, LLC, Alpine  
4 Pictures, Inc., Neil Kaufman, Michael Bergh, Randy Lacey, Michael Luther, Walter Price,  
5 Shawn Syre their agents and employees each cease and desist from violations of RCW  
6 21.20.010, RCW 21.20.040, and RCW 21.20.140.

7 **NOTICE OF INTENT TO CHARGE COSTS**

8 Pursuant to RCW 21.20.390, and based upon the Tentative Findings of Fact and  
9 Conclusions of Law, the Securities Administrator intends to order that Dorothy of Oz, LLC shall  
10 be liable for and shall pay investigate costs of \$2,000.  
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12 **NOTICE OF INTENT TO IMPOSE FINES**

13 Pursuant to RCW 21.20.395, and based upon the Tentative Findings of Fact and  
14 Conclusions of Law, the Securities Administrator intends to order that Dorothy of Oz, LLC shall  
15 be liable for and pay a fine of \$10,000.

16 Pursuant to RCW 21.20.395, and based upon the Tentative Findings of Fact and  
17 Conclusions of Law, the Securities Administrator intends to order that Alpine Pictures, Inc. shall  
18 be liable for and pay a fine of \$5,000.  
19

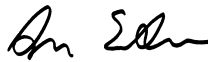
20 **AUTHORITY AND PROCEDURE**

21 This Statement of Charges is entered pursuant to the provisions of Securities Act and is  
22 subject to the provisions of RCW 34.05. The respondents, Dorothy Of Oz, LLC, Alpine  
23 Pictures, Inc., Neil Kaufman, Michael Bergh, Randy Lacey, Michael Luther, Walter Price,  
24 Shawn Syre, may each make a written request for a hearing as set forth in the NOTICE OF  
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1 OPPORTUNITY TO DEFEND AND OPPORTUNITY FOR HEARING accompanying this  
2 order.

3 If a respondent does not request a hearing, the Securities Administrator intends to adopt  
4 the above Tentative Findings of Fact and Conclusions of Law as final and enter an order to cease  
5 and desist permanent as to that respondent.  
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9 DATED AND ENTERED this 11<sup>th</sup> day of May, 2010.

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12 SUZANNE SARASON  
13 Chief of Enforcement

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16 Presented by:

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18 Edward R. Thunen  
19 Financial Legal Examiner  
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