

1
2
3
4
5
6
7

**STATE OF WASHINGTON
DEPARTMENT OF FINANCIAL INSTITUTIONS
SECURITIES DIVISION**

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

IN THE MATTER OF DETERMINING
whether there has been a violation
of the Securities Act of Washington by:

Order Number S-06-229-07-CO01

CONSENT ORDER

Foster Financial Services Inc., Linda Ora Foster
and James Allen Foster
Respondents

INTRODUCTION

Pursuant to the Securities Act of Washington, ch. 21.20 RCW, the Securities Division of the Department of Financial Institutions (“Securities Division”) and Respondents, Foster Financial Services Inc., Linda Ora Foster and James Allen Foster, do hereby enter into this CONSENT ORDER in settlement of the matters alleged herein. Respondents neither admit nor deny the Findings of Fact and Conclusions of Law stated below. The Securities Division and Respondents desire to avoid further litigation, and therefore Respondents consent to the entry of this order for the purposes of settlement in this proceeding and not for the benefit of, or use by, any other party, either as evidence of liability or as an admission of any fact or conclusion of law contained in this order.

FINDINGS OF FACT

I. RESPONDENTS

1. Foster Financial Services Inc. is a Washington corporation and a licensed Washington insurance agency that does business at 20550 Big Rock Lane NE in Poulsbo, Washington.

2. Linda Ora Foster is a Washington resident. She is the corporate secretary and a shareholder in Foster Financial Services Inc. From April 1996 until September 2004, she was a registered securities

1 salesperson in Washington. In August 2005, she was suspended by the National Association of Securities
2 Dealers for one year and fined \$10,000 for allegedly signing a client's name without the client's consent.

3 3. James Allen Foster is a Washington resident. He is the corporate president and a shareholder in
4 Foster Financial Services Inc.

5 II. OFFERING OF NOR'WEST PROPERTIES LLC MEMBERSHIP INTERESTS

6 4. During 2005 and 2006, Respondents, Foster Financial Services Inc., Linda Ora Foster and James
7 Allen Foster, offered and sold more than \$900,000 worth of Nor'West Properties LLC membership
8 interests to approximately 35 investors, most of whom were Washington residents. As commissions for
9 the sale of Nor'West membership interests, Respondents received cash payments totaling approximately
10 \$55,000 and Nor'West membership interests totaling approximately \$35,000.

11 5. When offering and selling Nor'West membership interests, Respondents each represented that
12 investor funds would be used by Nor'West to finance real property development projects. Respondents
13 each represented that investors would receive a proportionate share of net profits from the sale of the real
14 property development projects. Respondents each represented that investor funds would be pooled
15 together to pay project costs. The investors did not participate in the management of Nor'West or its real
16 property development projects.

17 III. OFFERING OF MILESTONE BENEFICIAL LLC MEMBERSHIP INTERESTS

18 6. During 2006, Respondents, Foster Financial Services Inc., Linda Ora Foster and James Allen
19 Foster, offered and sold more than \$1,775,000 worth of Milestone Beneficial LLC membership interests
20 to more than 30 investors, most of whom were Washington residents. As commissions for the sale of
21 Milestone membership interests, Respondents received cash payments totaling approximately \$100,000
22 and Milestone membership interests totaling approximately \$75,000.

1 7. Respondents each represented that investor funds would be used by Milestone to finance real
2 property development projects. Respondents each represented that investors would receive a 10% annual
3 return on their investments. Respondents each represented that investor funds would be pooled together
4 to pay project costs. The investors did not participate in the management of Milestone or its real property
5 development projects.

6 IV. OFFER AND SALE OF NOR'WEST MEMBERSHIP INTERESTS

7 8. When offering and selling Nor'West Properties LLC membership interests, Respondents each
8 overstated the likely return on investment. Respondents provided a Project Booklet for investors that
9 included pro forma financial statements and showed highlighted projected returns on investment for
10 various real property development projects. Some of the highlighted returns were more than 200%, but
11 the returns were not annualized. Respondents did not give investors historical financial statements for
12 Nor'West and did not fully explain the risks of the investment, including undercapitalization and real
13 property development risks for each project financed by Nor'West. Respondents failed to disclose to
14 investors that there was no established market for partially completed real estate development projects and
15 that Nor'West and its managing member had no track record for real property development.

16 9. Respondents each failed to disclose to Nor'West investors that Milestone investors would
17 receive a prior recorded deed of trust against real properties for development projects that were partially
18 funded by Nor'West investors. During 2006 and 2007, more than \$1,250,000 worth of deeds of trust were
19 recorded in favor of Milestone investors for real property development projects that were partially
20 financed by Nor'West investors. Respondents also failed to adequately disclose the ownership of the
21 project properties. Respondents gave investors projections showing that Nor'West investors would earn
22 approximately a 200% return on investment from the City Villa project, without clearly disclosing that
23 Nor'West investors had no ownership in the underlying real property.

1 10. Respondents each gave four Nor'West investors the option to convert their Nor'West
2 investments into a loan with 12% annual interest, without giving other Nor'West investors the same
3 option. Respondents each represented that Nor'West investors could redeem their investments at the end
4 of two years, without disclosing that there were no funds set aside to redeem the investors' interests.

5 11. Respondents each offered and sold Individual Retirement Account and other retirement plan
6 investments in Nor'West, without disclosing that there was no pre-approved custodian to handle the
7 investments. Respondents each failed to disclose that investors could be subject to penalties and
8 unanticipated taxes because they made ineligible retirement plan investments.

9 V. OFFER AND SALE OF MILESTONE MEMBERSHIP INTERESTS

10 12. When offering and selling Milestone Beneficial LLC membership interests, Respondents,
11 Foster Financial Services Inc., Linda Ora Foster and James Allen Foster, did not give investors historical
12 financial statements for Milestone. Respondents described the investors as "Member Lenders," without
13 giving the investors any promissory notes. Respondents did not clearly explain the terms of the Milestone
14 investment.

15 13. Respondents each failed to adequately disclose the real property development risks for each
16 project financed by Milestone. Respondents each failed to disclose the ownership of the real properties
17 that were being developed. Respondents each failed to disclose that Milestone invested more than
18 \$600,000 in the City Villa project without having any ownership in the underlying real property.

19 14. Respondents each failed to adequately disclose the risks of having insufficient funds to complete
20 all of the development projects that were financed by Milestone. Respondents failed to disclose to
21 Milestone investors that there was no established market for partially completed real estate development
22 projects and that Milestone and its managing member had no track record for real property development.

1 Respondents also represented that investors could withdraw their Milestone investments upon request,
2 without disclosing that there were no funds set aside to redeem the investors' interests.

3 15. Respondents each offered and sold Individual Retirement Account and other retirement plan
4 investments in Milestone, without disclosing that there was no pre-approved custodian to handle the
5 investments. Eberharter and Milestone failed to disclose that investors could be subject to penalties and
6 unanticipated taxes because they made ineligible retirement plan investments.

7 VI. ADVERTISEMENTS

8 16. From August 2006 through December 2006, Respondents ran misleading newspaper
9 advertisements to solicit investments in Nor'West and Milestone. Respondents each advertised that the
10 investments were safe, secure and profitable. Respondents ran an advertisement with a picture of the
11 Roseway Lane condominium project, without disclosing that the picture was only a concept drawing and
12 that the building did not exist. Respondents ran advertisements comparing a Milestone investment with a
13 bank CD and Respondents each represented that Milestone investors would be guaranteed a 10% return
14 with excellent flexibility.

15 VI. REGISTRATION STATUS

16 17. Nor'West Properties LLC is not currently registered to sell its securities in the state of
17 Washington and has not previously been so registered.

18 18. Milestone Beneficial LLC is not currently registered to sell its securities in the state of
19 Washington and has not previously been so registered.

20 19. Linda Ora Foster is not currently registered as a securities salesperson or broker-dealer in the
21 state of Washington and was not registered as such when offering or selling Nor'West or Milestone
22 membership interests.

1 20. James Allen Foster is not currently registered as a securities salesperson or broker-dealer in the
2 state of Washington and has not previously been so registered.

3 Based upon the above Findings of Fact, the following Conclusions of Law are made:

4 **CONCLUSIONS OF LAW**

5 I.

6 As described in the Findings of Fact, the offer and/or sale of Nor'West Properties LLC membership
7 interests and Milestone Beneficial LLC membership interests constitutes the offer and/or sale of a security
8 as defined in RCW 21.20.005(10) and (12), either in the form of an investment contract or risk capital.

9 II.

10 As described in the Findings of Fact, Respondents, Foster Financial Services Inc., Linda Ora Foster
11 and James Allen Foster, have each offered or sold said securities in violation of RCW 21.20.140 because
12 no registration for such offer or sale is on file with the Washington Securities Administrator.

13 III.

14 As described in the Findings of Fact, Linda Ora Foster and James Allen Foster have each violated
15 RCW 21.20.040 by offering or selling said securities while not registered as securities broker-dealers or
16 securities salespersons in the state of Washington.

17 IV.

18 As described in the Findings of Fact, Respondents, Foster Financial Services Inc., Linda Ora
19 Foster and James Allen Foster, have each offered or sold securities in violation of RCW 21.20.010 by
20 making untrue statements of material fact or omitting to state material facts necessary in order to make the
21 statements made, in the light of the circumstances under which they were made, not misleading.

22 **CONSENT ORDER**

23 Based upon the foregoing and finding it in the public interest:

1 IT IS AGREED AND ORDERED that Respondents, Foster Financial Services Inc., Linda Ora
2 Foster and James Allen Foster, and their agents and employees each shall cease and desist from offering
3 or selling securities in any manner in violation of RCW 21.20.140, the securities registration section of
4 the Securities Act of Washington.

5 IT IS FURTHER AGREED AND ORDERED that Linda Ora Foster and James Allen Foster and
6 their agents and employees each shall cease and desist from offering or selling securities in any manner
7 in violation of RCW 21.20.040, the securities broker-dealer and securities salesperson registration
8 section of the Securities Act of Washington.

9 IT IS FURTHER AGREED AND ORDERED that Respondents, Foster Financial Services Inc.,
10 Linda Ora Foster and James Allen Foster, and their agents and employees each shall cease and desist
11 from offering or selling securities in any manner in violation of RCW 21.20.010, the anti-fraud section
12 of the Securities Act of Washington.

13 IT IS FURTHER AGREED AND ORDERED that Linda Ora Foster shall pay a fine of \$25,000
14 and shall pay investigative costs of \$5,000 prior to the entry of this order.

15 IT IS FURTHER AGREED AND ORDERED that James Allen Foster shall pay a fine of \$12,500
16 and shall pay investigative costs of \$5,000 prior to the entry of this order.

17 IT IS FURTHER AGREED AND ORDERED that Linda Ora Foster shall not apply for a securities
18 broker-dealer or a securities salesperson license for a period of at least ten (10) years from the date this
19 order is entered.

20 IT IS FURTHER AGREED AND ORDERED that Linda Ora Foster shall not apply to be an
21 investment adviser or investment adviser representative for a period of at least ten (10) years from the
22 date this order is entered.

1 IT IS FURTHER AGREED AND ORDERED that James Allen Foster shall not apply for a
2 securities broker-dealer or a securities salesperson license for a period of at least ten (10) years from the
3 date this order is entered.

4 IT IS FURTHER AGREED AND ORDERED that James Allen Foster shall not apply to be an
5 investment adviser or investment adviser representative for a period of at least ten (10) years from the
6 date this order is entered.

7 IT IS FURTHER AGREED that the Securities Division has jurisdiction to enter this order.

8 IT IS FURTHER AGREED that in consideration of the foregoing, Respondents, Foster Financial
9 Services Inc., Linda Ora Foster and James Allen Foster, each waive their rights to a hearing in this
10 matter and to judicial review of this order.

11 WILLFUL VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE.

12 SIGNED this 2nd day of April, 2007

13 Approved for entry by:

14 /s/ Randall Steichen
15 Randall Steichen, WSBA #19264
16 Attorney for Respondents

17 Signed by:

18 Foster Financial Services Inc.

19 By /s/ James Allen Foster
20 James Allen Foster, President

21 Signed by:

22 /s/ Linda Ora Foster
23 Linda Ora Foster, individually

24 CONSENT ORDER

