

1 **STATE OF WASHINGTON**  
2 **DEPARTMENT OF FINANCIAL INSTITUTIONS**  
3 **SECURITIES DIVISION**

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

7 CHUM CHUM GAME COMPANY;  
8 CHARLES SMALTZ,

9 Respondents.

Order Number S-06-243-07-FO01

ENTRY OF FINDINGS OF FACT AND  
CONCLUSIONS OF LAW AND FINAL  
ORDER TO CEASE AND DESIST AND  
IMPOSE FINES

10 THE STATE OF WASHINGTON TO:

Chum Chum Game Company  
Charles Smaltz

11 On September 28, 2007, the Securities Administrator of the State of Washington issued  
12 Statement of Charges and Notice of Intent to Enter an Order to Cease and Desist, Impose Fines, and  
13 Recover Costs S-06-243-07-SC01, hereinafter referred to as "Statement of Charges," against Chum  
14 Chum Game Company and Charles Smaltz.

15 The Statement of Charges, together with a Notice of Opportunity to Defend and Opportunity for  
16 Hearing, hereinafter referred to as "Notice of Opportunity for Hearing," and an Application for  
17 Adjudicative Hearing, hereinafter referred to as "Application for Hearing," were personally served on  
18 Charles Smaltz on October 5, 2007. The Notice of Opportunity for Hearing and Application for  
19 Hearing were personally served on the registered agent and chairman for Chum Chum Game Company  
20 on October 26, 2007.

21 The Notice of Opportunity for Hearing advised Charles Smaltz and Chum Chum Game  
22 Company that a written application for an administrative hearing on the Statement of Charges must be  
23 received within twenty days from the date of receipt of the notice. Charles Smaltz and Chum Chum

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

1 Game Company each returned the Application for Hearing and indicated that each waived the right to  
2 a hearing.

3 In lieu of requesting a hearing, both Charles Smaltz and Chum Chum Game Company submitted  
4 a statement for consideration by the Securities Administrator. In their statements, Charles Smaltz and  
5 the chairman for Chum Chum Game Company requested that fines be waived.

6 Finding no grounds for amendment of the Statement of Charges, the Securities Administrator  
7 will therefore adopt as final the findings of fact and conclusions of law as set forth in the Statement of  
8 Charges.

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10 **FINDINGS OF FACT**

11 Respondents

12 1. Chum Chum Game Company is a Washington corporation established on December 29,  
13 2003. Chum Chum Game Company currently conducts business at 515 N. Farr Road, Spokane Valley,  
14 Washington. Chum Chum Game Company was created to produce and market original board games.

15 2. Charles Smaltz (“Smaltz”) is a Washington resident. He served as President of Chum Chum  
16 Game Company from 2003 to 2006.

17 Nature of the Conduct

18 *Introduction*

19 3. Chum Chum Game Company creates and sells board games. The company was founded  
20 to manufacture and market the original board game “Politics,” which was created by former Chum  
21 Chum Game Company president Charles Smaltz. Chum Chum Game Company also operates an  
22 online retail store on Amazon.com through which it offers and sells Politics and board games created  
23 by other companies.

*Nature of the Offering*

4. Between December 2003 and August 2007, Chum Chum Game Company offered investments to at least 162 investors. At least 121 of these investors were Washington residents. The investment was in the form of common stock in Chum Chum Game Company which was offered for \$1,000 a share. Chum Chum Game Company conducted several offering of shares:

- a. A \$80,000 offering of 80 shares in 2003–2004 to manufacture the board game;
- b. A \$250,000 offering of 250 shares in 2004 to market the board game;
- c. A \$50,000 offering of 50 shares in 2005 to set up an online store;
- d. A \$50,000 offering of 50 shares in 2005 to pay for general operating expenses; and
- e. A \$30,000 offering of 30 shares in 2006–2007 to pay for general operating expenses.

5. Chum Chum Game Company raised at least \$354,060 from sales of its securities between December 2003 and June 2005. Chum Chum Game Company could not produce financial records to indicate the amount of investor funds raised since June 2005.

6. Chum Chum Game Company located investors through personal contacts with Charles Smaltz or other shareholders. Smaltz also conducted a few presentations to small groups of potential investors, at least five of whom purchased shares. For a time, Chum Chum Game Company maintained a website containing information about purchasing shares of the company. Until 2005, the website was accessible by the general public. Chum Chum Game Company officers would send emails to current shareholders alerting them to new offerings, and company officers would promote the latest share offering at the annual shareholders' meeting. Friends and family members of shareholders attended these meetings and approximately 20 purchased shares as a result.

1           7. For each offering, investors received a budget breakdown detailing how Chum Chum  
2 Game Company would use the proceeds. For the \$250,000 offering, the breakdown included  
3 projections for income from games sales. These projections included that Chum Chum Game  
4 Company would sell 55,000 copies of Politics in the fourth quarter of 2004 and pay a dividend of  
5 \$1,400 per share. Since 2003, Chum Chum Game Company has sold a total of 2,000 to 3,000 copies  
6 of Politics and has paid no dividends.

7           8. Chum Chum Game Company required investors to complete an "Offer to Purchase" form  
8 indicating the number of shares they wished to purchase. Investors were then required to submit their  
9 contact information on an "Investor Information Sheet," and complete an IRS form for pass-through  
10 taxation of dividends. After purchasing, investors were provided with a copy of a Buy/Sell Agreement  
11 between the first four shareholders and Chum Chum Game Company. This Agreement states that if  
12 one of the shareholder parties to the agreement obtains a firm offer to purchase his shares, Chum Chum  
13 Game Company has the right to redeem the shares, and if the company does not elect to redeem the  
14 shares, the other shareholder parties may elect to redeem the shares. If neither redeems the shares, the  
15 shares can be sold pursuant to the firm offer. The copy of the Buy/Sell Agreement provided to  
16 investors was not signed or dated. Investors were not directed to sign or return the Buy/Sell  
17 Agreement nor was there a blank space in which to add their names.

18                               *Public Offering*

19           9. Chum Chum Game Company conducted a public offering of securities. Chum Chum  
20 sold its securities to at least 162 unique individuals in five offerings between 2003 and 2007. Investors  
21 were not screened for sophistication, suitability, or accredited status. Most of the investors were  
22 neither sophisticated nor accredited. Investors did not sign any agreements not to resell or distribute

1 shares, and Chum Chum Game Company did not require them to do so. Chum Chum Game Company  
2 did not require letters from investors evidencing investment intent. In addition, Chum Chum Game  
3 Company kept company records in a manner precluding access or inspection by the average investor.  
4 Records, including but not limited to financial statements beyond June 2005, were incompletely  
5 maintained or not maintained at all.

6 Misrepresentations and Omissions

7 10. Chum Chum Game Company failed to provide material information regarding the  
8 company including but not limited to the management background of company officers, financial  
9 statements, the general risk factors related to investing in securities, and the specific risk factors related  
10 to the toy and board game industry.

11 11. Chum Chum Game Company failed to provide a reasonable basis for its projections of  
12 sales and dividend payments. Chum Chum Game Company was a new company without significant  
13 operating history or experience in the toy or board game industry and provided no source or basis for  
14 the projections made to investors.

15 12. Chum Chum Game Company failed to provide terms for the purchase and sale of its  
16 shares. The Buy/Sell Agreement provided to investors was neither signed nor dated by the initial  
17 shareholders, making it unclear whether it was in effect. Moreover, it was uncertain whether the terms  
18 of the Agreement applied to subsequent investors as they were not asked to sign the Agreement.  
19 Investors were left with the impression that shares could be resold provided that the company was  
20 given the right to redeem first. In fact, the Buy/Sell agreement anticipates the situation in which a  
21 shareholder first obtains a firm offer to purchase from a third party.

Registration Status

13. Chum Chum Game Company is not currently registered to sell its securities in the State of Washington and has not previously been registered.

14. Charles Smaltz is not currently registered as a securities salesperson or broker-dealer in the State of Washington and has not previously been so registered.

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

**CONCLUSIONS OF LAW**

1. The offer or sale by Chum Chum Game Company and Charles Smaltz of the investments described above constitute the offer and/or sale of a security as defined in RCW 21.20.005(10) and (12).

2. The offer or sale of said securities violated RCW 21.20.140 because Chum Chum Game Company was not registered in the State of Washington and did not qualify for an exemption filing.

3. Charles Smaltz violated RCW 21.20.040 by offering or selling said securities while not registered as a broker-dealer or securities salesperson in the State of Washington.

4. The offer or sale of the investments described above was made in violation of RCW 21.20.010 because, as set forth in the Tentative Findings of Fact, Chum Chum Game Company and Charles Smaltz made misstatements of material facts or omitted to state material facts necessary in order to make the statements made, in light of circumstances under which they were made, not misleading.

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2 **FINAL ORDER**

3 It is hereby ORDERED that the Respondents, Chum Chum Game Company and Charles Smaltz,  
4 and their agents and employees, each cease and desist from offering or selling securities in violation of  
5 RCW 21.20.140, the securities registration section of the Securities Act of Washington.

6 It is further ORDERED that the Respondent Charles Smaltz cease and desist from violating  
7 RCW 21.20.040, the section of the Securities Act of Washington requiring registration of securities  
8 salespersons, broker-dealers, investment advisers, and investment adviser representatives.

9 It is further ORDERED that the Respondents, Chum Chum Game Company and Charles Smaltz,  
10 and their agents and employees, each cease and desist from violating RCW 21.20.010, the anti-fraud  
11 section of the Securities Act of Washington.

12 It is further ORDERED that Respondent Chum Chum Game Company shall be liable for and pay  
13 a fine of \$5,000.

14 It is further ORDERED that Respondent Charles Smaltz shall be liable for and pay a fine of  
15 \$5,000.

16 **AUTHORITY AND PROCEDURE**

17 This Final Order is entered pursuant to the provisions of RCW 21.20.390 and RCW 21.20.395  
18 and is subject to the provisions of RCW 21.20.440 and Chapter 34.05 RCW. Respondents each have  
19 the right to petition the superior court for judicial review of this agency action under the provisions of  
20 chapter 34.05 RCW. For the requirements for filing a Petition for Judicial Review, see RCW  
21 34.050.510 and sections following. Pursuant to 21.20.395, a certified copy of this order may be filed  
22

1 in Superior Court. If so filed, the clerk shall treat the order in the same manner as a Superior Court  
2 judgment as to the fine, and the fine may be recorded, enforced, or satisfied in like manner.

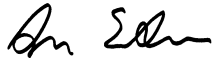
3 **WILLFUL VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE.**

4 DATED AND ENTERED this 26th day of November, 2007.

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8 MICHAEL E. STEVENSON  
9 Securities Administrator

10 Approved by:

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12 \_\_\_\_\_  
13 SUZANNE SARASON  
14 Chief of Compliance & Examinations

15 Presented by:

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18 JILL M. VALLELY  
19 Enforcement Attorney

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