



STATE OF NEW MEXICO  
REGULATION AND LICENSING DEPARTMENT  
SECURITIES DIVISION

In the Matter of )  
 )  
KARAOKE WORLD CHAMPIONSHIPS USA, LLC )  
WENDELL S. PAYNE )  
 )  
Respondents. )

**SUMMARY ORDER TO CEASE AND DESIST AND  
NOTICE OF INTENT TO IMPOSE SANCTIONS**

The Director of the New Mexico Securities Division (“Director”) after investigation has good reason to believe, and therefore alleges the following:

**I. PROPOSED FACTS**

**A. Persons**

1. Karaoke World Championships USA, LLC (“KWC-USA”) is a domestic limited liability company incorporated under the laws of the State of Ohio with its principal place of business at 9378 S. Mason Montgomery Road #231, Mason, OH 45040. KWC-USA’s registered agent for service of process is CH&K Agent Service, Inc., located at 10 Courthouse Plaza SW, Suite 1100, Dayton, OH 45402.
2. Wendell S. Payne (“Payne”) is the President of KWC-USA and a resident of the State of Ohio. Payne’s last known mailing address is 8102 Walcot Lane, Apt. B, Cincinnati, OH 45249.
3. Neither KWC-USA nor Payne is registered to transact securities in any capacity in the State of New Mexico.
4. Dena Bellelli (“Bellelli”) was the Vice President of KWC-USA. She is a resident of Truth or Consequences, NM.
5. John Bush (“Bush”) provided capital to KWC-USA and is a resident of Truth or Consequences, NM.
6. John Shoop (“Shoop”) provided capital to KWC-USA and is a resident of Ruidoso, NM.

## **B. Contact between Payne and Bellelli**

7. Bellelli has been involved in karaoke promotion activities since moving to New Mexico in 2005, first with her local American Legion chapter and later with other groups in and around the Truth or Consequences area. In 2008, Bellelli became involved the "Karaoke New Mexico" competition, promoting karaoke activities throughout the state.
8. Bellelli met Payne in April 2009 when Payne came to Truth or Consequences, NM to act as judge for the Karaoke New Mexico state finals.
9. Due to a perceived commonality of interests, Payne and Bellelli agreed to work together to further the mutual goals of their two companies – Karaoke New Mexico and KWC-USA.
10. After several successful, promotional undertakings for both Karaoke New Mexico and KWC-USA, Payne offered Bellelli a 49% partnership interest in KWC-USA, which she accepted. As part of the partnership agreement, Bellelli had to disassociate herself from Karaoke New Mexico and relinquish proprietary Karaoke New Mexico information to KWC-USA, including the database of contestants, fans, sponsors, and venues. Bellelli paid no money for the 49% interest in KWC-USA.
11. No document memorializes the business agreement between Payne and Bellelli.
12. Bellelli agreed to work from New Mexico on KWC-USA projects (while Payne worked from his home state of Ohio) and did so for two years. Over the course of that time, Bellelli did not receive a salary but was engaged in promotion, sponsorship, social networking, competitions, and other related aspects of growing KWC-USA's business. KWC-USA was contacted by ABC in December 2009 regarding the network's interest in filming a reality TV show centered on karaoke called "Karaoke Battle USA."
13. For most of 2010, Bellelli was engaged in the work of filming competitions and developing footage for the ABC pilot. During this time, Bellelli understood that Payne was responsible for signing up sponsors whose contributions would provide the capital necessary to send the winners of that year's national competition to the world finals in Moscow, Russian Federation.
14. However, in September 2010, Payne informed Bellelli that KWC-USA did not have the money to send the national winners to compete at the world championship and instead asked her whether she knew of anyone who would be interested in "investing" in KWC-USA.

## **C. Contact between Payne, Bellelli, Shoop, and Bush**

15. Thanks to her earlier fundraising activities with Karaoke New Mexico, Bellelli did know individuals willing to provide capital on short notice in order to support KWC-USA. She reached out to two of them, John Bush and John Shoop, at Payne's insistence.

16. Bellelli conveyed her concerns regarding KWC-USA's financial viability to Bush and Shoop, as well as discussing with them the possibility of loss of principal. Bush and Shoop dealt directly with Payne, but both also noted that they only entertained the idea of investing in KWC-USA because of Bellelli's involvement and established track record of success.
17. Both Bush and Shoop were aware prior to paying any money that ABC was looking at KWC-USA for a potential reality TV show.

**D. Bush and Shoop invest with Payne and KWC-USA**

18. On September 10, 2010, Shoop wired \$30,000 to Payne and KWC-USA from his account at Citibank.
19. On September 17, 2010, Bush wired \$10,000 to Payne and KWC-USA from his account at White Sands Federal Credit Union.
20. Bush believed, and emails from Payne would attest, that he was paying for a 5% interest in KWC-USA for investment purposes with no expectation of any role in managing the affairs of the company.
21. Shoop appears to have negotiated for his 15% stake after consummating the transaction with Payne. It is only on the basis of post-transaction emails and other statements that Shoop and Payne demonstrate agreement as to the purpose of Shoop's investment. Moreover, at all relevant times, Shoop's intent was to profit from the investment with no expectation of any role in the company's operation.
22. Aside from emails between Bush, Shoop, and Payne, there is no written documentation attesting to the nature of their respective agreements. However, in Payne's responses to the various correspondence sent to him by Bush and Shoop in 2010 and 2011, he does not appear to ever contest their claim to a percentage ownership of KWC-USA:
  - a. In an email dated September 15, 2010, two days before Bush's \$10,000 wire transfer, Payne writes to Bush and specifically sets forth the understanding of their arrangement: "You will provide Karaoke World Championships USA, LLC with \$10,000 in return for the following: 5% of shares in KWCUSA [...]"
  - b. In an email dated June 7, 2011, Shoop writes to Payne, noting *inter alia* that Payne has had nine months to provide Shoop with documentation evidencing their agreement but had failed to do so. Shoop notes: "I need proof of my investment. You have never sent me an explanation of how many shares I have in your LLC, what the price is for each share, [...] *You have never explained what my 15% of the company is based upon [...]*" (emphasis added)

1. In response, rather than denying the promise of ownership in KWC-USA, Payne replies, "John[,] I am sorry we haven't done more. [...] If you can just hang on until we get past these tapings/regionals, we will get caught up on all the paperwork."
- c. Similarly, in an email dated August 20, 2011, Shoop tells Payne, "I thought all along I was vested in 15% of your LLC. *You verbally stated to me that my 30 thousand would guarantee that.*" (emphasis added)
  1. Far from denying Shoop's allegation, Payne replies, "No I did not lie and we can still do that. [...] Simple way is to do the LLC as Wendell 51[%] Cindy 39[%] John Shoop 15[%] John Bush 5[%]."
23. In late August 2011, Payne persisted in suggesting that he would formalize all investments with the proper paperwork once the new LLC agreement was inked. Payne sent the draft agreement reflecting the above percentages to Bellelli, Shoop, and Bush on the understanding that all four would sign it in each other's presence at the 2011 Karaoke World Championship in Killarney, Ireland. All prospective LLC stakeholders were present except Payne, who did not travel to Ireland and did not notify anyone of his impending absence.
24. On September 20, 2011, Payne emailed Bellelli and Bush claiming "duress" and purporting to sever ties with Bellelli, Bush, and Shoop while claiming that "KWCUSA will make arrangement [*sic*] to repay the loans made to us by John Shoop and John Bush."
25. Three weeks after the competition in Ireland, Payne, through counsel, sent a threatening letter to Bush and Bellelli, stating: "There is no document in existence which confers any ownership interest in or affiliation with [KWC-USA] to any of you, and therefore any representations that you are owners or officers of the Company are false."

#### **E. Payne's unethical business practices**

26. On August 18, 2011, Payne sent an email to Bellelli, Bush, and Shoop in which he described an ownership interest in KWC-USA held by his sister, Patricia Staley:

"[...] in an effort to move things along *I have asked my sister to relinquish all ownership in all businesses.* She has signed those documents and I have them. [...] Just so you know, she help [*sic*] hugely in the beginning and I was able to get quick short questions answered which save us substantial money." (emphasis added)
27. At the time of their investments, neither Bush nor Shoop was aware of Staley's 49% interest in KWC-USA.
28. Bellelli alleges that following the signing of KWC-USA's agreement with ABC in 2011, the contract between them called for payment from ABC to KWC-USA in three

installments. Bellelli, who was present at the time the first check was tendered, recalls that it was in the amount of \$125,000. Payne reimbursed Bellelli \$2,000 contemporaneous with the receipt of that check.

29. Bellelli incurred a total of \$27,500 in business expenses during the course of her employment with KWC-USA. Of that total, she has only been reimbursed \$7,500.
30. Payne maintained exclusive access to corporate financial records and accounts, consistently refusing to divulge any details pertaining to KWC-USA's profitability or other business metrics. As a result, no clear picture of KWC-USA's finances is – or has ever been – available to anyone but Payne.
31. Payne profited from Bellelli's efforts to promote KWC-USA and to recruit new investors essentially free of charge. He also benefitted personally from the vagueness of his solicitations for investments, characterizing them as "loans" for the purpose of disavowing any shared ownership in KWC-USA.

## II. PROPOSED CONCLUSIONS OF LAW

1. Section I is incorporated.
2. Shared ownership in a limited liability corporation is classified as a security under NMSA 1978, § 58-13C-102(DD)(6). In an investment contract scenario such as this, the true test is whether the purchaser had significant control over the operations of the company. *U.S. v. Leonard*, 529 F.3d 83 (2d Cir. 2008). This is a case-by-case determination emphasizing the totality of the circumstances. Substance is to be prized over form. *See Reves v. Ernst & Young*, 494 U.S. 56, 61 (1990).
3. Owing to Bush and Shoop having little to no influence over KWC-USA operations and their mutual belief that they were investing funds with the expectation of profit to be derived primarily from the efforts of others, their fractional interests in KWC-USA are securities in New Mexico. *See NMSA 1978, § 58-13C-102(DD)(6)*.
4. The Director has jurisdiction over this matter pursuant to NMSA 1978, §§ 58-13C-601 and 58-13C-610.
5. Payne violated NMSA 1978, § 58-13C-501(B), Securities Fraud, by failing to disclose Patricia Staley's 49% interest in KWC-USA prior to Bush and Shoop's investments. This constitutes two violations, one per investor.
6. Payne violated NMSA 1978, § 58-13C-501(C), Securities Fraud, by systematically withholding material company information from Bush and Shoop in order to later dispute the nature of their capital contributions. This constitutes two violations, one per investor.
7. Payne violated NMSA 1978, § 58-13C-402(A), Sale of Securities by an Unregistered Agent, by selling fractional interests in KWC-USA to Bush and Shoop, both New Mexico

residents, without first being licensed to do business in New Mexico and not subject to any exemption. This constitutes two violations, one per investor.

8. Payne and KWC-USA violated Rule 12.11.4.15(C) NMAC, Suitability, by recommending a security to Bush and Shoop without taking due regard for their investment objectives, experience, risk profile, income, age, tax status, liquidity needs or time horizon. This constitutes two violations, one for each of the investors to whom a recommendation was made.
9. Payne and KWC-USA violated Rule 12.11.4.15(Q) NMAC with respect to FINRA Rule 2010, by failing to provide any documents whatsoever evidencing the nature of the agreement between Respondents and the two investors, Bush and Shoop.
10. KWC-USA violated NMSA 1978, § 58-13C-402(D), Employment of an Unregistered Agent, by being an issuer engaged in offering or selling securities in New Mexico and employing or associating with an agent (Payne) who transacted business in New Mexico on its behalf without being registered. This constitutes one violation.

### **III. ORDER**

Due to the preliminary nature of the relief required and pursuant to NMSA 1978, § 58-13C-604(A)(1), Karaoke World Championships USA, LLC and Wendell S. Payne are hereby **ORDERED** to immediately cease and desist from all investment solicitation and sales activities in the State of New Mexico.

### **IV. PROPOSED ORDER**

After administrative hearing or waiver of such hearing by Respondent, the Director proposes to issue a Final Order that:

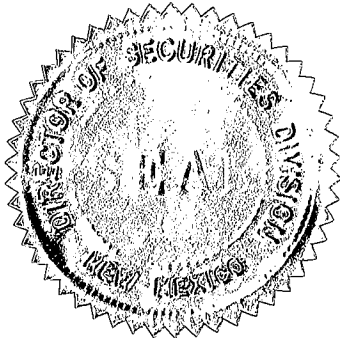
1. Pursuant to NMSA 1978, § 58-13C-412(B), Karaoke World Championships USA, LLC and Wendell S. Payne are permanently barred from transacting securities in New Mexico.
2. Pursuant to NMSA 1978, § 58-13C-604(C), the Director will assess a fine of up to \$10,000 against KWC-USA and Payne for each violation of the New Mexico Uniform Securities Act and its Rules, taking into consideration the extent of Respondents' conduct and the resources of the Respondents committing such violations. The Director will consider each discrete instance of conduct in determining an appropriate fine.
3. In this case, Payne faces nine (9) counts and KWC-USA faces four (4) counts.

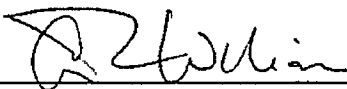
## NOTICE OF ADMINISTRATIVE HEARING RIGHTS

Each Respondent is hereby notified of its statutory right to request an administrative hearing on the Notice of Contemplated Action in the above referenced matter. Administrative hearings are governed by NMSA 1978, § 58-13C-604(b)(4)-(11). Respondents have fifteen (15) days from receipt of this notice to file a written request for a hearing. The request may be sent by U.S. Mail RRR or via e-mail to the Clerk at feliz.sandoval@state.nm.us. The Director will set the matter for hearing no more than sixty days (60) nor less than fifteen (15) days from receipt of the hearing request. The Director will promptly notify the Respondent of the time and place for hearing. The Director or an appointee will conduct the hearing. The Director or his appointee will pass upon the admissibility of evidence and may exclude evidence that is incompetent, irrelevant, immaterial or unduly repetitious.

As discussed more fully in NMSA 1978, § 58-13C-604(B), any Respondent requesting a hearing is entitled to: appear on its own behalf or may be represented by an attorney; present all relevant evidence; to examine all opposing witnesses who appear on any matter relevant to the issues; and request and obtain discovery, including the names and addresses of witnesses.

ENTERED AT Santa Fe, New Mexico this 4<sup>th</sup> day of September 2015.



  
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Alan R. Wilson, Director  
New Mexico Securities Division