BEFORE THE DIRECTOR OF THE DEPARTMENT OF FINANCE

OF THE STATE OF IDAHO

STATE OF IDAHO, Department of Finance, Securities Bureau, Complainant, vs. Ecostructure Corporation aka Ecostructure Financial, Ecostructure Capital, LLC, Winmark, Inc., Mark Winstein, and their agents and representatives Respondents.	Docket No. 2007-7-26 AGREEMENT AND ORDER

The Director of the Department of Finance has instituted an investigation into the business activities of Ecostructure Corporation, Ecostructure Financial, Ecostructure Capital, LLC, Winmark, Inc., Mark Winstein, and their agents and representatives. Pursuant to said investigation, it appears to the Director that violations of the Idaho Uniform Securities Act (Act), Idaho Code §30-14-101 et seq., have occurred. The Director and the named Respondents have agreed to resolve this without a public hearing or other adjudication of this matter. Therefore, the Director deems it appropriate and in the public interest that this Agreement and Order be entered. Respondents consent to the entry of this Agreement and Order.

Respondents

1. Mark Winstein is an Idaho resident currently residing at 1904 Lexington Ave. Moscow, ID 83843. Mr. Winstein moved to Idaho in June of 2004. Mr. Winstein is an officer, director and the incorporator of Ecostructure Corporation, Ecostructure Capital, LLC and Winmark, Inc.

2. Ecostructure Corporation was a Delaware corporation incorporated on February 25, 2005

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and re-incorporated on August 7, 2006. Ecostructure Corporation made an initial filing for a Certificate of Authority with the Idaho Secretary of State's office on May 26, 2005. The Certificate of Authority was revoked on August 6, 2007. Mr. Winstein is the founder and president of Ecostructure Corporation.

3. Ecostructure Corporation was preceded by a Washington DC corporation of the same name incorporated by Mr. Winstein in September of 2001.

4. Ecostructure Financial was a name used by Mr. Winstein as a dba for Ecostructure Corporation.

5. Ecostructure Capital, LLC was a limited liability company started by Mr. Winstein as a subsidiary of Ecostructure Corporation in an attempt to raise capital as a private equity fund. Mr. Winstein stated that Ecostructure Capital, LLC is no longer in business.

6. Winmark, Inc. was a Nevada corporation founded by Mr. Winstein in 2003 to raise investment capital. Mr. Winstein stated that Winmark, Inc. is no longer in business.

Background

7. Prior to moving to Idaho Mr. Winstein lived in the Washington DC area and was involved in a number of environmental businesses.

8. Mr. Winstein started Ecostructure Corporation in 1991 and incorporated in Washington DC in September of 2001. His intent was to develop a mechanism for financing environmentally conscious businesses.

9. In 2003 Mr. Winstein started Winmark, Inc. in an attempt to raise funds to finance eco-friendly businesses. Mr. Winstein filed a Form SB-2 for Winmark, Inc. with the U.S. Securities and Exchange Commission on May 11, 2006 but never completed it.

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10. Mr. Winstein has represented to the Department that he never offered or sold securities through Winmark, Inc.

I. Pre-Idaho Securities Activities.

11. On September 12, 2003 Mr. Winstein produced a Private Placement Memorandum and subscription documents for a securities offering for Ecostructure Corporation. The private placement memorandum makes a claim for a securities exemption under Regulation D, Section 504, and section 4(2). The offering was for 100,000 shares of stock in Ecostructure Corporation for $1.00 per share. The offer was set to expire on October 11, 2003

12. Mr. Winstein offered and sold stock in Ecostructure Corporation based on the exemption claimed in the 2003 private placement memorandum. He contacted thirty-five prospective investors of which, twenty-six invested. The total amount raised was $35,620.00. None of the contacts or investors were from Idaho.

II. Idaho Based Securities Activities

13. Mr. Winstein moved to Idaho in June of 2004.

14. On February 25, 2005 Mr. Winstein transferred the corporate charter of Ecostructure Corporation from Washington DC to Delaware.

15. Mr. Winstein stated that in December 2004, he hired attorney Jon Klavens of Massachusetts to help him design a fundraising strategy and offering documents. Mr. Winstein states that Mr. Klavens recommended that Mr. Winstein first create a new corporation in Delaware and then transfer shareholders in Ecostructure DC to the new Ecostructure DE. Mr. Klavens' also designed an offering strategy using a Subscription Agreement that was intended to be used to raise the new round of capital, and provided Mr. Winstein with the completed Subscription Agreement.

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Mr. Winstein states that Mr. Klavens' billings related to designing the shareholder transfer process greatly increased far beyond the attorney's original price quote for his services and that Mr. Winstein was unable to afford to continue retaining Mr. Klavens, and ended his business relationship with Mr. Klavens after April 2005. As a result, no offers of securities were made while Mr. Klavens was serving as Mr. Winstein's security attorney, and the Ecostructure DC shareholders were not transferred to Ecostructure DE during the time Mr. Winstein worked with Mr. Klavens.

16. Mr. Winstein produced a business plan document for Ecostructure Corporation dated September 29, 2005. The document states that it does not constitute an offer to sell or a solicitation of an offer to buy any security. It states that any offer to sell securities of Ecostructure Corporation will only be made by delivery of a written subscription agreement. It goes on to state that Ecostructure may make such an offer to accredited investors where the offer would be exempt from registration.

17. On October 11, 2005 Mr. Winstein was contacted by a member of an angel capital investment club that he had applied to. The club member expressed interest in Ecostructure Corporation and Mr. Winstein provided him with a copy of the private placement memorandum drafted in 2005.

18. The investor invested $5,000.00 in Ecostructure Corporation DE using the subscription document created by Mr. Klavens for the purpose of funding a beta version of an "Ecopreneur Portal" for use on the internet.

19. Mr. Winstein stated that he began to solicit additional investors in Idaho and elsewhere in December 2005 and continued until May of 2006. The purpose for these solicitations was to raise funds to create a private equity fund and to create a legally compliant website to offer securities.

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20. Mr. Winstein admitted that he solicited eleven investors of which ten invested. The one individual who did not invest and two of those that did invest were Idaho residents. The total investment received during this offer was $65,000.00 of which $10,000.00 was from the Idaho investors.

21. Mr. Winstein used a December 22, 2005 version of the business plan created in September, 2005 in discussions related to the offer and sale of stock to the investors identified in paragraph 20. There were no subscription documents provided to or signed by the investors named in item 20 above. There were no documents signed by the investors attesting to the fact that they were accredited investors.

22. Mr. Winstein stated that the private equity fund called the Ecostructure Portfolio Fund was fully designed on two different occasions by two different law firms during 2006, however no offerings were made relative to the Fund and no capital was raised into the Fund.

23. Mr. Winstein stated that Ecostructure hired a separate professional data-site development company and developed the Ecostructure Portal. The Portal accomplished proof of concept, successfully generating monthly recurring revenue while providing a searchable listing of green entrepreneurs. Due to cost overruns on the part of the development team, development of this site slowed in the summer of 2006 and stopped completely in spring 2007.

24. In mid-2006 Mr. Winstein renegotiated the structure of Ecostructure Corporation with each of the existing shareholders. He also re-incorporated in Delaware on August 7, 2006. As part of this restructure Mr. Winstein provided each shareholder with a "Series A, Preferred Stock Purchase Agreement." This document provided for the transfer of their ownership from the original common stock in the Washington DC corporation and any common shares in the previous Delaware

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corporation to Series A, preferred stock in the new Delaware corporation.

25. Mr. Winstein added himself and three other non-Idaho shareholders as part of this preferred stock offering.

26. In October of 2006 and in March of 2007 Mr. Winstein received investments from three more Idaho investors. These investors were solicited and sold stock based on a subscription agreement which claimed a Regulation D Federal exemption. No Regulation D exemption was filed with the Securities and Exchange Commission nor did Mr. Winstein make a notice filing with the Idaho Department of Finance. These investors were called "Series B Offering Investors 2007." Mr. Winstein later returned the funds he received from these three Idaho investors.

27. According to information provided by Mr. Winstein, he has solicited approximately seventy-nine prospective investors of which forty invested with him. Of those forty investors, five were Idaho residents at the time of their investment and thirteen became investors after being solicited from Idaho. As noted, three of the Idaho investors had their money returned to them.

28. The investment programs offered and sold by Mr. Winstein are securities as defined by the Idaho Uniform Securities Act (2004).

29. Mr. Winstein is not and has never been licensed to sell securities in or from Idaho.

30. None of the securities offered or sold by Mr. Winstein in or from Idaho have been registered with the Idaho Department of Finance as required by the Idaho Uniform Securities Act (2004).

31. The records of the Idaho Department of Finance do not show any exemption filings made by Mr. Winstein for any of the securities offerings he has offered or sold in or from Idaho.

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Findings of Violations

Count I: Unregistered Securities

32. Beginning on a date uncertain, but at least since 2003 and since moving to Idaho in 2004, Mr. Winstein has offered and sold unregistered investment securities in the form of stock and investment contracts in Ecostructure Corporation to residents of Idaho and other states. The stock and/or investment contracts are securities as defined under the Act, Idaho Code §30-14-102(28).

33. The securities offered and sold in or from Idaho by the Mr. Winstein were not registered or exempt from registration as required under the Idaho Uniform Securities Act.

34. The respondents have violated Idaho Code §30-14-301.

Count II: Unlicensed Sales Agents or Broker/Dealers

35. At no time have Mr. Winstein or the respondent companies been licensed by the Idaho Department of Finance as broker-dealers or salesmen to offer for sale securities as required by Idaho Code § 30-14-401 and Idaho Code § 30-14-402. Therefore, the respondents have either transacted business in this state as a broker-dealer or salesman without having been registered, or have acted as a broker-dealer or issuer, and employed a salesman who was not registered under the Act.

36. The respondents have violated Idaho Code § 30-14-401 and Idaho Code § 30-14-402.

Count III: Anti-Fraud Violations: Omissions

37. In connection with the offer and sale of securities, Mr. Winstein or his employees or agents, omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, in violation of the antifraud provisions of the Act. The omissions include, but are not limited to, the following:

38. Mr. Winstein failed to adequately disclose the risks associated with an investment in a

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new company with no previous business history.

39. Mr. Winstein failed to disclose the financial condition and operating history of any of the companies for which he was soliciting investments.

40. Mr. Winstein failed to disclose his own financial history or the financial history of any of his associates to investors.

41. Mr. Winstein failed to disclose to investors that certain investors would receive the same securities at different prices and that investments of certain investors would dilute the interests held by previous investors.

42. Mr. Winstein failed to disclose to investors that the securities offered and sold were not registered for sale in the State of Idaho.

43. Mr. Winstein failed to disclose to the investors that he was not licensed to sell securities in Idaho.

44. Mr. Winstein has violated Idaho Code § 30-14-501(2).

Count IV: Anti-Fraud Violations: Misrepresentations

45. In connection with the offer and sale of securities, Mr. Winstein made misrepresentations of material facts in violation of the antifraud provisions of the Act. The misrepresentations include, but are not limited to, the following:

46. The Ecostructure Financial business plans dated September 25, 2005 and December 22, 2005 represented to investors that the development of the Ecostructure business model had been financed by a combination of loans, gifts and equity investments of approximately $707,000.00. No evidence has been provided that substantiates such a claim.

47. The Ecostructure Financial business plans dated September 25, 2005 and December 22,

2005 represent that Ecostructure was valued at $5,000,000.00. No reasonable basis was provided for this valuation.

48. On the Ecostructure website slideshow made available to investors, the respondents represent to investors that over $1,000,000.00 had been invested so far. The respondents provided no reasonable evidence in support of this claim.

49. The respondents have violated Idaho Code §30-14-501(2).

Remedies

Complainant and Respondents hereby agree as follows:

1. Respondents neither admit nor deny the findings of violations as alleged herein.

2. Respondents agree to offer rescission to all Idaho residents who invested in the Ecostructure Corporation or in any other investment program offered and sold to them by Mr. Winstein while they were residents of Idaho.

3. Respondents further agree to offer rescission to residents of any other state who invested in the Ecostructure Corporation or in any other investment program offered and sold to them by Mr. Winstein while Mr. Winstein was a resident of Idaho.

4. Enforcement of the rescission requirement will not be pursued based on an affidavit provided by Mr. Winstein that he is financially unable to provide such restitution.

5. Respondents agree to not solicit any further investments in or from Idaho unless and until the offerings and the sales agents are in compliance with of the Idaho Securities Act.

6. Respondents agree to not claim the availability of, use, or offer or sell securities under any exemptions under the Idaho Uniform Securities Act without giving written notice to the Director. Said written notice shall be provided at least ten (10) days in advance of the Respondents' proposed

activities in Idaho.

7. Respondents agree to abide by the Idaho Uniform Securities Act in the future. In the event that Respondents commit future violations of the Idaho Uniform Securities Act or fail to adhere to the terms of this Order, Respondents acknowledge that Complainant can incorporate the allegations giving rise to this Order in any future proceeding.

8. This Agreement and Order is in lieu of civil litigation or other proceedings.

DONE AND DATED at Boise, Idaho, this ____ day of February 2009.

ECOSTRUCTURE CORPORATION

BY: Mark Winstein
NAME: Mark Winstein
Title: President

ECOSTRUCTURE FINANCIAL

BY: Mark Winstein
NAME: Mark Winstein
Title: President

ECOSTRUCTURE CAPITAL, LLC.

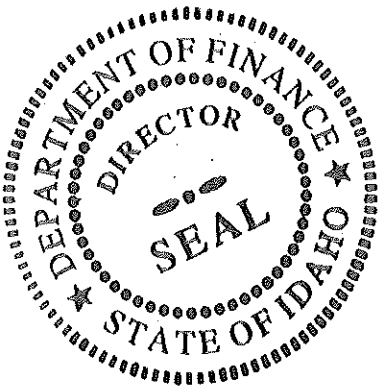
BY: Mark Winstein
NAME: Mark Winstein
Title: President

WINMARK, INC.

BY: Mark Winstein
NAME: Mark Winstein
Title: President

MARK WINSTEIN

MARILYN T. CHASTAIN
Bureau Chief, Securities Bureau
Department of Finance, State of Idaho

IT IS SO ORDERED this 5TH day of February 2009.

GAVIN M. GEE
Director, Idaho Department of Finance