

**STATE OF FLORIDA
DEPARTMENT OF LEGAL AFFAIRS
OFFICE OF THE ATTORNEY GENERAL**

IN THE MATTER OF:

L05-3-1051

WHITNEY INFORMATION NETWORK, INC.,
A Colorado corporation,

Respondent.

ASSURANCE OF VOLUNTARY COMPLIANCE

Pursuant to the provisions of Chapter 501, Part II, the Florida Deceptive and Unfair Trade Practices Act, Section 817.41, Florida Statutes, and Chapter 2-18.002, Florida Administrative Code, the STATE OF FLORIDA, DEPARTMENT OF LEGAL AFFAIRS, OFFICE OF THE ATTORNEY GENERAL, hereinafter the “Department,” caused an investigation to be made into certain business practices of WHITNEY INFORMATION NETWORK, INC., a Colorado Corporation, d/b/a WHITNEY EDUCATION GROUP, INC., WEALTH INTELLIGENCE ACADEMY, INC., CASH FLOW GENERATOR, TEACH ME TO TRADE, STAR TRADER, SUCCESS DEVELOPMENT INSTITUTE, hereinafter “Respondent,” doing business in the State of Florida, whose place of business is located at 1612 Cape Coral Parkway, Cape Coral, Florida, 33904.

I. INTENT

The Department believes that its investigation into the practices of Respondent and the resulting allegations, as more fully set forth hereinafter in Section II, are meritorious and that if litigated, would be supported by the evidence adduced in the investigation. However, the Department recognizes and acknowledges the expense and length of any potential litigation of

the matters investigated and the Department believes that the settlement as reflected in this Assurance of Voluntary Compliance (“AVC”) is in the best interests of the Department.

Whitney Information Network, Inc., the respondent herein, has denied and continues to deny each and all of the allegations, claims and contentions of the Department as set forth in Section II, or arising from the activities, conduct, statements, acts or omissions alleged or that could have been alleged in Section II. Nonetheless, Respondent has concluded that any potential litigation of the matters investigated by the Department would be protracted and expensive, and taking into account the uncertainty and risks inherent in any litigation, has determined that it is desirable and beneficial to Respondent that the matters investigated be settled in the manner and on the terms and conditions set forth in this AVC, notwithstanding its denial of the allegations herein.

The Department and Respondent, therefore, are prepared to enter into this AVC without an admission or judicial determination that Respondent has violated any laws, rules or regulations, and for the purpose of a resolution of the matters investigated. The Department, by and through the undersigned Deputy Attorney General, being in agreement, does in this matter accept this AVC in termination of the matters investigated, pursuant to § 501.207(6), Florida Statutes, and by virtue of the authority vested in the Department by said statute.

1.1 Definitions:

As used in this Assurance and for purposes of this Assurance only, the following terms shall have the following meanings:

A. “Matters investigated” shall mean the consumer complaints reviewed by the department and investigative findings related thereto and connected therewith, including

independent verification by the Department of some of the allegation complained of by consumers. The parties agree that the matters investigated do not include, and this AVC does not apply, to issues involving the investigation of complaints and related matters pertaining to residential real estate opportunities promoted and marketed to Respondent's students by Respondent, Russell Whitney and other related and non-related entities collectively referred to as "Gulfstream."

B. "Advertising" (including "advertisement" and "advertise") means any message created and published by or at the direction of Respondent directly to the general public or any segment thereof that promotes or is likely to promote directly or indirectly any good, merchandise, property, product, commodity, or service offered by Respondent directly to the general public or any segment thereof. The term "advertising" includes messages conveyed by Respondent and includes, but is not limited to, messages conveyed visually, orally, or in writing:

- (i) in a newspaper, magazine, periodical, leaflet, flyer, catalog, brochure, circular, on or in packaging; in facsimile material; in any direct mail literature, including but not limited to notices, invoices and forms; in a telephone book or any other written, graphic, pictorial, illustrated or printed material;
- (ii) on any recording, radio, television, video, computer, public address system, by a telephonic transmission, telex, facsimile or telecopier transmission or during any other transmission;
- (iii) on an inside or outside sign or display;
- (iv) in any point-of-sale literature, price tag, or sign;
- (v) during any in-person appearance or otherwise during any personal contact

with the general public or any segment thereof

C. “Clear and Conspicuous” (including “Clearly and Conspicuously”) shall mean that the required disclosure is in a reasonably understandable form and is readily noticeable to a reasonable Consumer. The following, without limitation, shall be considered in determining whether a statement, claim, term, or representation is Clear and Conspicuous:

- (i) Whether it is in such size, color, contrast, location, duration, and audibility that it is readily noticeable, readable, and understandable to a reasonable Consumer;
- (ii) Whether it contradicts or is inconsistent with any other information with which it is presented;
- (iii) Whether it is legible;
- (iv) If a statement modifies, explains, or clarifies other information with which it is presented, whether the statement is presented in proximity to the information it modifies, in a manner that is readily noticeable, readable, and understandable to a reasonable Consumer;
- (v) Whether an oral disclosure is delivered in a volume and cadence sufficient for a reasonable Consumer to hear and comprehend it;
- (vi) Whether a visual disclosure is of a size and shade, and appears for a duration, sufficient for a reasonable Consumer to read and comprehend it;
- (vii) In a print advertisement or promotional material directed to Consumers, whether the disclosure is in a type size and location readily noticeable for a Consumer to read and comprehend it, in print that contrasts with the background against which it appears.

- D. “Consumer” shall have the same definition as contained in Section 501.203, Florida Statutes.
- E. “Deceptive Price Comparisons” shall mean the act of reducing a price from a fictitious former price to create the illusion of a sale or bargain.
- F. “Material” shall mean a statement, claim, term, act, practice, or representation that is likely to affect a consumer’s choice or conduct regarding the purchase or lease of a good or service.
- G. “Misleading advertising,” as defined by Section 817.41, Florida Statutes, means “any statements made, or disseminated, in oral, written, or printed form, or otherwise, to or before the public, or any portion thereof, which are known, or through the exercise of reasonable care or investigation could or might have been ascertained, to be untrue or misleading, and which are or were so made or disseminated with the intent or purpose, either directly or indirectly, of selling or disposing of real or personal property, services of any nature whatever, professional or otherwise, or to induce the public to enter into any obligation relating to such property or services.”

II. ALLEGATIONS OF THE DEPARTMENT

2.1 Respondent is in the business of financial and real estate investment education offered through seminars and training.

2.2 Respondent has distributed both television and print advertisements to solicit consumers to purchase these seminars and training packages.

The Department alleges and the Respondent denies that:

2.3 Respondent used advertisements which contained testimonials that were edited,

and otherwise failed to accurately reflect both the diligence necessary to use Respondent's programs and any resulting success or failure from the use thereof.

2.4 Respondent used testimonials in its real estate training program advertising which inaccurately suggested that its seminars and training would lead consumers to a career in real estate.

2.5 Respondent placed statements and images in its advertisements which inaccurately suggested that pictured students reached a certain level of success from its products.

2.6 Respondent failed to clearly and conspicuously disclose that many testimonials used in its advertisements were not the typical results of using Respondent's training programs.

2.7 Respondent used deceptive price comparisons to create a sense of urgency for consumers to purchase training packages by quoting fictitious before-sale prices during the seminars and then reducing them.

2.8 Respondent failed to provide all advertised services offered in its seminars and educational programs and typically used its seminars as a tool to promote its other educational products.

2.9 Respondent misled students after they attended the three day seminar, by telephonically informing them of their special selection for advanced training, when such training was offered to any student.

2.10 Respondent promoted their educational seminars and training programs without disclosing that expensive advanced seminars and training programs were required in order to achieve the success portrayed in its advertisements.

2.11 Respondent unlawfully denied refund requests pursuant to Ch. 2-18, F.A.C.

2.12 The Department investigated the foregoing alleged violations of Chapter 501, Part II, and Section 817.41, Florida Statutes, believing them to be meritorious. Respondent, for its part, denies each and all of the foregoing allegations. Nonetheless, Respondent and the Department desire to resolve the issues raised during the course of the matters investigated, each being mindful of the time, expense and the risks of litigation.

III. STATEMENT OF PROHIBITED AND REQUIRED ACTS^a

3.1 Prohibited Acts: Respondent agrees that it will refrain from the following acts and practices:

- A. Violating the provisions of Chapter 501, Part II, Florida Statutes, Florida's Deceptive and Unfair Trade Practices Act (2005)
- B. Violating the provisions of Section 817.41(1), Florida Statutes, Misleading Advertising Prohibited;
- C. Respondent will refrain from suggesting that financial opportunities, results, or claims, will result from the use of its products and services unless:
 - (1) such claims can be substantiated by Respondent as obtainable by a significant proportion of consumers; or
 - (2) Respondent provides a disclaimer specifically stating that the claims are not typical results obtained by a significant proportion of consumers;
- D. Respondent shall not provide testimonials by persons unless Respondent has good reason to believe that the claims of success made by persons in Respondent's testimonials were obtained by the person's use of Respondent's educational and training products;
- E. Respondent shall not make false statements in its advertisements about its trainers' and Students' successes.

^a Statutory authority for Prohibited and Required Acts contained in Sections 3.1 and 3.2 of this AVC can be found and is based upon the following: FDUTPA; Section 817.41(1), Florida Statutes; Federal Trade Commission Act §§5, 12 (15 U.S.C. §§45, 52); 16 Code of Federal Regulations, §§ 233, 255; Federal Trade Commission Policy Statement on Deception, appended to Cliffdale Associates, Inc., 103 FTC 110(1981); and Federal Trade Commission Policy Statement Regarding Advertising Substantiation, appended to Thompson Medical Co., 104 FTC 648, (1984), aff'd 791 F. 2d 189, (D.C. Cir 1986), cert. denied 479 U.S. 1086 (1987). *See also*, Federal Trade Commission publication "Facts for Business" and Federal Trade Commission publication "Dot Com Disclosures."

F. Respondent shall not utilize testimonials by its instructors or employees or by persons being compensated for the making of such testimonial, without clearly and conspicuously disclosing that such testimonials are provided by employees and/or trainers of Respondent or by persons being compensated for such testimonial;

G. Respondent shall refrain from engaging in acts of deceptive price comparisons as defined herein in Section 1.1 E.

H. Respondent shall not, directly or indirectly, use testimonials or endorsements from persons who participated in their seminars or training programs and elected to use Respondent's goods or services unless:

(1) the person providing the testimonial was not compensated in any way for the testimonial, or if compensated, Respondent fully discloses such fact;

(2) all of the information in the testimonial relating to any earnings or profits claimed by the person giving the testimonial are truthful and are fully, clearly and conspicuously disclosed;

(3) the testimonials themselves are illustrative of the typical results that the average consumer can actually expect to achieve from following the training instructions, and if not, that fact shall be fully disclosed;

(4) the testimonial accurately reflects the actual opinion, finding, belief or experience of the endorser(s) or person providing the testimonial; and

(5) the testimonial does not include any representations which are incomplete, deceptive, misleading, edited, or otherwise unfair or cannot fully be substantiated if made directly by Respondent;

I. Respondent shall not directly or indirectly encourage consumers to register for Respondent's programs based on an assertion that "seating is very limited," or "seating is limited," or term or phrase of similar import, if seating is not, in fact, reasonably limited;

J. Respondent shall not, directly or indirectly, during any introductory workshop or any other informational seminar or meeting, or in any advertisement, telemarketing solicitation or promotional material, represent or imply that profits or earnings, as presented at such seminar, meeting or workshop, or in any advertisement, solicitation or promotional material, are the typical experience of a consumer using any of Respondent's programs or training courses, if such is not the case. If Respondent makes claims or uses illustrations that do not reflect the typical and average experience of a consumer using Respondent's goods or services, Respondent must make appropriate, effective, clear and conspicuous disclaimer. Verifiable substantiation for any claims or illustrations must be readily available, and the substantiation must be provided to consumers upon request.

3.2 Required Acts: Respondent, and its officers, employees, representatives, agents, successors, assigns, agents, and attorneys and those persons in active concert or participation with Respondent are required to:

A. Display the following message during the initial portion of their television advertisements:

Results from programs, or claims, advertised or represented, are based on individual effort and other factors, and are exceptional, or atypical and are not to be expected by the average person using these programs or methods. All consumers will not be eligible for all programs.

The message above shall be read aloud slowly, clearly and understandably and be conspicuously placed, and run concurrently with the displayed message. Respondent shall refer to both Paragraph 1.1C of this Agreement and the following FTC guidelines evaluating the effectiveness of advertising disclosures in determining whether such disclosure above is presented clearly and conspicuously:

(i) **Prominence**: whether the qualifying information is prominent enough for consumers to notice it and read (or hear) it;

(ii) **Presentation**: whether the qualifying information is presented in easy-to-understand language that does not contradict other things said in the ad and is presented at a time when consumers' attention is not distracted elsewhere;

(iii) **Placement**: whether the qualifying information is located in a place and conveyed in a format that consumers will read (or hear); and

(iv) **Proximity**: whether the qualifying information is located in close proximity to the claim being qualified;

B. Clearly and conspicuously display the statement: "Results not typical" below each statement given by any person providing comments on behalf of Respondent, unless such statements represent a common or generally experienced result of using Respondent's products;

C. Clearly and conspicuously disclose that advanced courses (with stated approximate price range) are usually required to obtain results suggested in its advertising. Respondent shall also disclose a general price range in which the consumer is to expect to pay to obtain these results;

D. Clearly and conspicuously disclose the name of the seminars attended by persons giving testimonials;

E. Clearly and conspicuously state its refund policies and comply with all laws relating to refund policies, including, where applicable, Ch. 2-18, F.A.C;

F. Clearly and conspicuously disclose in Respondent's advertisements for the workshop or seminar being promoted that Respondent will offer for sale at such workshop or seminar other services and products of Respondent;

G. Fully comply with Section 817.415, Florida Statutes, and Federal Trade Commission's Guide Concerning the Use of the Word "Free" or Similar Representations;

H. Respondent shall comply with the Federal Trade Commission Guides Concerning Use of Endorsements and Testimonials in Advertising, 16 C.F.R. §255.

3.3 No Governmental Approval of Practices: The Attorney General has not approved any of Respondent's past, current, or proposed marketing practices and no portion of this AVC shall be construed as such approval.

IV. CONSUMER REDRESS /REFUNDS

The parties acknowledge that during the course of the Department's investigation into Respondent's activities, Respondent has already paid the sum of Five Hundred Eighty-two Thousand Eight Hundred Thirteen dollars and 12 cents (\$582,813.12) in consumer refunds and restitutions. The parties further agree that future refunds shall be handled as set forth below in Section V, paragraph 5.3 of this AVC.

V. MONETARY RELIEF

5.1. Fees and Costs: The Department's expenses for all investigative fees, and costs and attorney's fees for the matters investigated herein exceed the sum of Three Hundred Thousand dollars (\$300,000.00). The Department and Respondent agree that Respondent shall pay the sum of Three Hundred Thousand dollars (\$300,000.00), in satisfaction of all investigative fees and costs and attorney's fees of the matters investigated and for costs associated with ongoing future enforcement initiatives pursuant to Chapter 501, Part II, Florida Statutes.

The Department and Respondents further agree that the sum of Three Hundred Thousand dollars (\$300,000.00) attributable to the Department's investigative and attorney's fees shall be allocated equally between the Department and its "Seniors vs. Crime, Inc." project and shall be payable as follows:

Respondent shall contribute One Hundred Fifty Thousand dollars (\$150,000.00) to the "Seniors vs. Crime, Inc. " project for educational, investigative, and crime prevention programs for the benefit of the senior citizens and the community as a whole upon delivery of the signed AVC to the Department. Payment shall be made by check to the account of "Seniors vs. Crime, Inc." and shall be delivered to Katherine E. Timon, Senior Assistant Attorney General, Office of the Attorney General, 135 West Central Blvd., Suite 1000, Orlando, FL 32801, upon the delivery by Respondent of the signed AVC to the Department.

Respondent shall pay the remaining One Hundred Fifty Thousand dollars (\$150,000.00) to the Department in three equal installments of Fifty Thousand dollars (\$50,000.00) payable

thirty (30) days, sixty (60) days and (90) days after delivery of the signed AVC to the Department. Payment shall be made by certified or cashier's check made payable to the Department of Legal Affairs Revolving Trust Fund and shall be sent by certified mail to: Katherine E. Timon, Assistant Attorney General, Office of the Attorney General, Century Plaza, 135 W. Central Blvd., Suite 1000, Orlando, FL 32801.

5.2 Restitution: Respondent shall within thirty (30) days of its signing of this agreement pay the sum of Four Hundred Fifty Eight Thousand Six Hundred One and 83/100 Dollars (\$458, 601.83) as reimbursement to Consumers for the purchase of services from Whitney Education Group. The consumers to be paid by Respondent and the amount of their restitution are contained in the "List of Consumers To Be Paid" and attached hereto as "Exhibit A". Respondent will send the Department a list of the consumers paid and proof of payment thirty days after the signing of this agreement.

5.3 Reserves for Additional Claims: Upon the signing of the AVC, Respondent will set aside, in an escrow account to be maintained by Respondent, the sum of One Hundred Twenty Five Thousand Dollars (\$125,000.00), as the "reserve fund", for the purpose of making refunds to consumers who purchased Respondent' services prior to the execution of the AVC and who have complained within 180 days after the execution of the AVC, alleging violations of Chapter 501, Part II, Florida Statutes, the Florida Deceptive and Unfair Trade Practices Act, Florida Statutes, 817.41, Florida Statutes, or Rule 2-18.002, Florida Administrative Code, Contracts for Future Consumer Services. Respondent agrees to the distribution of the funds in the reserve fund by the trustee of the reserve fund to any and all consumers who satisfy the foregoing criteria and who filed complaints with either Respondent or the Office of the Attorney General within One

Hundred Eighty (180) days after the execution of the AVC. Payment from the reserve fund shall be made after inquiry, review and agreement by the Department and Respondent's liaison regarding payment and the amount to be paid for any such claims. Once all agreed upon refunds to all eligible consumers have been made, any remaining funds shall be returned to the Department for future enforcement initiatives pursuant to Chapter 501, Part II, Florida Statutes.

5.4 No Penalties: In consideration for the fulfillment of the various injunctive and monetary obligations set forth above, no penalties are to be imposed under this Agreement. However, the Department reserves the right to seek Chapter 501 penalties for any future violation(s) of the injunctive terms contained within this Agreement. Additionally, the Department reserves the right to seek attorney's fees and costs if an action or proceeding becomes necessary to enforce the terms and provisions of this Agreement, or becomes necessary based on any future noncompliance.

5.5 No Acceptance: The receipt or deposit by the Department of any monies pursuant to the Assurance of Voluntary Compliance does not constitute acceptance by the Attorney General, and any monies received will be returned if this Assurance of Voluntary Compliance is not executed by the Department.

VI. GENERAL PROVISIONS

6.1 Agreement: This Assurance shall be governed by § 501.207 of the FDUTPA and shall remain in effect until rescinded by agreement of the parties or voided by a Court of competent jurisdiction. This Assurance shall be binding upon Respondent, its subsidiaries, affiliates, successors, and assigns. If Respondent merges with any other business entity or sells, assigns, or otherwise transfers substantially all of its assets to any other business entity,

Respondent shall provide reasonable prior notice of this Assurance to the surviving corporation or the purchaser, assignee, or transferee and its binding effect upon the surviving corporation, purchaser, assignee, or transferee.

6.2 Future Violations: It is understood that, pursuant to § 501.207(6) of the FDUTPA, unless this Assurance is rescinded by agreement of the parties or voided by a Court for good cause, subsequent failure to comply with the terms of this Assurance is prima facie evidence of a violation of the FDUTPA. Any such failure to comply with the terms and conditions of this AVC shall subject Respondent, to any and all civil penalties and sanctions authorized by law, including attorney's fees and costs.

6.3 Penalty for Future Violations: For each material violation of this AVC, as determined by the Department, Respondent shall pay the Department a penalty of \$5,000.00 for each day the violation continues. Isolated and minor violations or violations made as a result of a good faith error shall not subject Respondent to a penalty pursuant to this section. In the event the Department uncovers an instance or practice of Respondent which the Department believes in good faith violates this AVC, such practice shall not subject Respondent to a penalty pursuant to this section unless the Department gives Respondent written notice of such violation and Respondent fail to stop such practice within ten (10) days of receipt of such notice.

6.4 Liaison: Within five (5) days of the Execution Date of the Assurance, Respondent shall appoint a Consumer Affairs Liaison (the "Liaison"), who will, among other things, be responsible for reviewing claims against the reserve fund as set forth in Section 5.3 of this AVC, and acting as a direct liaison to the Department or other enforcement authorities. The Liaison shall have the specific responsibilities of: (1) providing the Department with copies of

its television and print advertisements, testimonials and other promotional material within a reasonable time after the signing of this AVC, demonstrating compliance with the terms of this agreement; and (2) investigating and using his or her best efforts to resolve any concerns regarding compliance with this Assurance, including complaints directed to the Liaison by the Department. The Liaison position shall be maintained for a period of three years from the Execution Date of the Assurance.

6.5 No Changes to Avoid Terms: Respondent shall not effect any change in their form of doing business or their organizational identities for the purpose of avoiding the terms and conditions set forth in this Assurance.

6.6 Compliance with Law: Nothing herein relieves the Respondent of their duty to comply with applicable laws of the State and all federal or local laws, regulations, ordinances, and codes, nor constitutes authorization by the Attorney General for Respondent to engage in acts and practices prohibited by such laws.

6.7 Preservation of Private Claims: Nothing herein shall be construed as a waiver of any private rights causes of action, or remedies of any private person against Respondent.

6.8 Release: The parties agree that the agreements made in this Assurance constitute a complete resolution and settlement of all issues and matters relating to or which is the subject of the matters investigated, with the exception of matters related to "Gulfstream". This Department releases, acquits, and forever discharges Respondent and each of its directors, officers and employees from any and all actions, causes of action, obligations, liabilities, claims or demand for compensatory, special, punitive, exemplary, or treble damages, civil penalties, claims for relief, or demand whatsoever in law or in equity, civil or administrative, which were

asserted or maintained, could have been asserted or maintained, or which could in the future be asserted or maintained against Respondent in any civil, or administrative action, or proceeding, based upon, arising out of, or connected with, directly or indirectly, the matters investigated.

6.9 Acknowledgment of Legal Representation: Respondent is represented by their counsel Akerman & Senterfitt, in executing this Assurance agreement.

VII. ACCEPTANCE

7.1 Effective Date: This Agreement shall become effective upon its acceptance by the Deputy Attorney General, who may refuse to accept it at his discretion. The receipt of or deposit by the Department of any monies pursuant to this AVC does not constitute acceptance by said Department, and monies received will be returned if this AVC is not accepted. This Agreement may be signed in counterpart.

IN WITNESS WHEREOF, Respondent has caused this AVC to be executed by an authorized representative, as a true act and deed, in the County and State listed below, as of the date affixed thereon.

SIGNATURES APPEAR ON THE SIGNATURE PAGES WHICH FOLLOW

BY MY SIGNATURE I hereby affirm that I am acting in my capacity and within my authority as Chief Executive Officer of Whitney Information Network, Inc., and that by my signature the Respondent, its directors, officers, employees, agents, successors and assigns are bound to the terms and conditions of this AVC.

WHITNEYINFORMATION NETWORK, INC.

by:

John Kane
Chief Executive Officer

STATE OF FLORIDA

COUNTY OF _____

BEFORE ME, an officer duly authorized to take acknowledgments in the State of Florida, personally appeared John Kane and he acknowledged before me that he executed the foregoing instrument for the purposes therein stated, on this ____ day of _____, 2008.

Sworn to and subscribed before me this ____ day of _____, ____.

NOTARY PUBLIC
(print, type or stamp commissioned name of
Notary Public)

Personally known _____ or

Produced identification _____ (check one)

Type of Identification Produced: _____

Accepted this _____ day of _____, 2008.

KATHERINE E. TIMON
ASSISTANT ATTORNEY GENERAL
Department of Legal Affairs
Office of the Attorney General
Economic Crimes Division
135 W. Central Blvd., Suite 1000
Orlando, FL 32801
(407) 245-0833 (Telephone)
(407) 245-0365 (Facsimile)
Email: Katherine.Timon@myfloridalegal.com
Florida Bar No. 0872555

Accepted this _____ day of _____, 2008.

DEPUTY ATTORNEY GENERAL
OFFICE OF THE ATTORNEY GENERAL
The Capitol, PL-01
Tallahassee, FL 32399-1050
(850) 245-0140