

ATTORNEY GENERAL OF THE STATE OF NEW YORK  
INVESTOR PROTECTION BUREAU

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In the Matter of

Assurance No. 18-161

**Investigation by BARBARA D. UNDERWOOD,  
Attorney General of the State of New York, of**

Jonathan Nierenberg,

Respondent.

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**ASSURANCE OF DISCONTINUANCE**

The Office of the Attorney General of the State of New York (“OAG”) commenced an investigation pursuant to N.Y. GBL § 362, N.Y. Exec. Law § 63(12), and the common law of the State of New York, into allegations of fraud involving securities in Cardis Enterprises International, N.V. (“Cardis” or the “Company”). This Assurance of Discontinuance (“Assurance”) contains the findings of the OAG’s investigation and the relief agreed to by the OAG and Respondent Jonathan Nierenberg (collectively, the “Parties”).

**OAG’s FINDINGS**

1. Respondent Nierenberg is a resident of Cedarhurst, New York.
2. Respondent Nierenberg was, at relevant times, a consultant, the chief marketing officer, and ultimately the acting chief executive officer of a subsidiary of Cardis.
3. Cardis claimed to possess patented and proprietary technology to make low-value credit card transactions less expensive for merchants. Historically, low-value credit card transactions have posed a problem for merchants because they include a fixed fee, regardless of the size of the transaction, which has the effect of severely depressing margins.

4. Cardis raised tens of millions of dollars from investors in stock sales and loans through a steady drumbeat of false representations that: (a) it was on the verge of monetizing its technology through partnerships with prominent companies; and (b) an initial public offering (“IPO”) or buyout of Cardis was on the horizon.

5. In fact, many of Cardis’ purported partnerships did not advance beyond preliminary discussions, and there was no exit opportunity on the horizon. The notion of an IPO or buyout was far-fetched for several reasons, including because Cardis failed to maintain basic books and records.

6. Cardis also made misrepresentations and omissions concerning key Cardis personnel. First, Cardis failed to disclose that its founder and principal, Aaron Fischman, had been permanently barred by the National Association of Securities Dealers as part of a settlement of allegations that he had manipulated the price of a penny stock. Second, Cardis misrepresented the role of its key financial officer, Stephen Brown. Brown was variously touted as serving as the Chief Financial Officer, Vice President of Finance, and/or Senior Financial Executive, but he did not perform many of the core duties generally associated with these senior finance positions.

7. Cardis’ key personnel – Fischman, Brown, Steven Hoffman (fundraiser), Seth Rosenblatt (director and officer of Cardis-related entities), and Respondent Nierenberg – all participated in the fraudulent marketing of Cardis to investors.

8. While Cardis was raising significant investor funds, Fischman was fraudulently diverting much of the proceeds to enrich himself, family members, and favored charities. Lawrence Katz, Cardis’ in-house attorney, aided in Fischman’s theft. Katz controlled Cardis’ principal bank account (an IOLA account in the name of his law firm), in which a large amount

of investor moneys were deposited and later diverted to Fischman. Katz also diverted Cardis moneys for his own personal use.

9. Cardis' fraud included conduct during Respondent Nierenberg's tenure at Cardis and Respondent Nierenberg personally made materially false representations to investors by representing that: (a) Cardis' relationship with a smart parking meter company was more advanced than it really was; and (b) investor moneys had gone to good purposes, while failing to disclose Fischman's significant diversion of investor funds.

10. Cardis' fraud was material to investors because it related to the company's business prospects, the integrity of key company personnel, the mismanagement of the company and lack of meaningful financial controls, and because investors believed their moneys were going towards the development of the company and not the personal enrichment of its officers.

11. Investors reasonably relied on Cardis' fraudulent misrepresentations and omissions.

12. OAG finds that Respondent's actions are in violation of the Martin Act, N.Y. Exec. Law § 63(12), and the New York common law.

13. Respondent neither admits nor denies the OAG's Findings, paragraphs 1-12 above.

14. Respondent submitted a Personal Financial Statement, dated December 17, 2018, to the OAG documenting and certifying his financial circumstances under penalty of perjury.

15. The OAG finds the relief and agreements contained in this Assurance appropriate and in the public interest. THEREFORE, the OAG is willing to accept this Assurance pursuant to Executive Law § 63(15), in lieu of commencing a statutory proceeding for violations based on the conduct described above.

IT IS HEREBY UNDERSTOOD AND AGREED, by and between the Parties:

**RELIEF**

- a. *General Injunction:* Respondent shall not engage, or attempt to engage, in conduct in violation of any applicable laws, including, but not limited to, GBL § 359-e and § 359-g and expressly agrees and acknowledges that any such conduct is a violation of the Assurance, and that the OAG thereafter may commence the civil action or proceeding contemplated in paragraph 12, *supra*, in addition to any other appropriate investigation, action, or proceeding.
- b. *Securities Industry Injunction:* Respondent is enjoined and restrained, for five years from the date of execution of this Assurance, from: (1) directly or indirectly engaging or attempting to engage in any manner in the issuance, exchange, sale, offer to sell, purchase, offer to purchase, promotion, negotiation, advertisement, investment advice, investment management or distribution of any stocks, bonds, notes, evidences of interest or indebtedness, foreign currency orders, calls or options or any other securities or commodities within or from the State of New York; (2) attempting to engage in any manner in the securities or commodities business within or from the State of New York as a broker, dealer, issuer, investment adviser, investment manager, or as an officer, director, principal, controlling person, agent, affiliated person, consultant or salesperson of a broker, dealer, issuer, investment adviser or investment manager; (3) directly or indirectly engaging or attempting to engage in any manner in the writing, publishing, preparing, selling, or distributing any letter or other literature advising, suggesting, or in other manner communicating advice within or from the State of

New York with respect to the purchase or sale of securities or commodities; and from forecasting, advising, or in any other manner suggesting either orally or in writing any method or methods to be used in connection with the purchase or sale of securities or commodities; and (4) forming or causing to form, or working for or in aid or assistance of, any entity for the purpose of soliciting, or causing investors or customers to invest in securities within and from the State of New York.

- c. *Specific Injunction:* Respondent shall not work for Cardis (or any affiliated entity), or participate in any business activities related to Cardis, except that Respondent Nierenberg may participate in efforts to wind down Cardis.
16. Monetary Relief
- a. *Monetary Relief Amount with Payment:* Respondent shall pay to the State of New York \$100,000 in restitution (the “Monetary Relief Amount”) within five years of the execution of this Assurance, with Respondent paying \$20,000 per year, beginning in 2019.
  - b. Payments shall be made by attorney check, corporate or certified check, or bank draft, which shall be made payable to the “State of New York”, and shall reference Assurance No. 18-161; payments shall be addressed to the attention of Jeffrey A. Novack, State of New York, Office of the Attorney General, Investor Protection Bureau, 28 Liberty St., New York, NY 10005.
  - c. Payments in excess of \$50,000 shall be made by wire transfer.
  - d. *Judgment by Confession:*

(i) To secure the payment described by paragraph 9(a), Respondent will execute and deliver, at the time of the execution and delivery of this Assurance, the accompanying Affidavit for Judgment by Confession (attached hereto as Exhibit A), confessing judgment for the Monetary Relief Amount of \$100,000, plus collection fees of twenty two percent (22%) of any unpaid Monetary Relief Amount at the time of any subsequent default, plus statutory costs of \$15.00. Plaintiff will reduce the Monetary Relief Amount by the principal amount of payments made by Respondent to Plaintiff to calculate the Unpaid Monetary Relief Amount at the time of any subsequent default.

(ii) *Default in Payment:* In the event that Respondent fails to timely and properly make payment as required by paragraph 9, the OAG shall provide Respondent with written notice, by first class mail, of such failure. If Respondent does not cure such failure within 30 days of the OAG's written notice, the OAG may file and enter the applicable Affidavit for Judgment by Confession as a judgment against Respondent, at any time, and without further notice, for the balance owed pursuant to this Assurance at the time of default, less any payments made prior to default, plus the collection fees and statutory costs described above.

(iii) *Default Due to Misrepresentation:* Respondent's misrepresentation of his financial circumstances shall constitute a default under this Assurance, and the OAG may therefore file and enter judgment pursuant to the process described below. In the event that Respondent has misrepresented his financial circumstances by making a material misrepresentation in his Personal Financial Statement, or in any other related financial disclosure provided by Respondent,

which served as a basis for Respondent's representation of an inability to pay, and the OAG's agreement to suspend payment of a portion of the Monetary Relief Amount, the OAG may, on thirty (30) days written notice to Respondent by first class mail of its intent to file and enter judgment, file and enter the applicable Affidavit for Judgment by Confession as a Judgment against Respondent, at any time and without further notice, for the balance owed pursuant to this Assurance at the time of this default, including the suspended balance, less any payments made prior to default, plus the collection fees and statutory costs described above. The determination as to whether or not a material misrepresentation has been made by Respondent in his financial disclosure is within the sole discretion of the OAG.

### **MISCELLANEOUS**

#### **Subsequent Proceedings:**

17. Respondent expressly agrees and acknowledges that the OAG may initiate a subsequent investigation, civil action, or proceeding to enforce this Assurance, for violations of the Assurance, or if the Assurance is voided pursuant to paragraph 9, and agrees and acknowledges that in such event:

- a. any statute of limitations or other time-related defenses are tolled from and after the effective date of this Assurance;
- b. the OAG may use statements, documents, or other materials produced or provided by the Respondent prior to or after the effective date of this Assurance;

- c. any civil action or proceeding must be adjudicated by the courts of the State of New York, and that Respondent irrevocably and unconditionally waives any objection based upon personal jurisdiction, inconvenient forum, or venue.
- d. evidence of a violation of this Assurance shall constitute prima facie proof of a violation of the applicable law pursuant to Executive Law § 63(15).

18. If a court of competent jurisdiction determines that the Respondent has violated the Assurance, the Respondent shall pay to the OAG the reasonable cost, if any, of obtaining such determination and of enforcing this Assurance, including without limitation legal fees, expenses, and court costs.

Effects of Assurance:

19. This Assurance is not intended for use by any third party in any other proceeding.

20. All terms and conditions of this Assurance shall continue in full force and effect on any successor, assignee, or transferee of the Respondent. Respondent shall include any such successor, assignment, or transfer agreement a provision that binds the successor, assignee, or transferee to the terms of the Assurance. No party may assign, delegate, or otherwise transfer any of its rights or obligations under this Assurance without the prior written consent of the OAG.

21. Nothing contained herein shall be construed as to deprive any person of any private right under the law.

22. Any failure by the OAG to insist upon the strict performance by Respondent of any of the provisions of this Assurance shall not be deemed a waiver of any of the provisions hereof, and the OAG, notwithstanding that failure, shall have the right thereafter to insist upon

the strict performance of any and all of the provisions of this Assurance to be performed by the Respondent.

Communications:

23. All notices, reports, requests, and other communications pursuant to this Assurance must reference Assurance No. 18-161 shall be in writing, and shall, unless expressly provided otherwise herein, be given by hand delivery; express courier; or electronic mail at an address designated in writing by the recipient, followed by postage prepaid mail, and shall be addressed as follows:

If to the Respondent, to: [ ], or in his/her absence, to [ ]

If to the OAG, to: Jeffrey A. Novack, or in his absence, to the person holding the title of Bureau Chief, Investor Protection Bureau.

Representations and Warranties:

24. The OAG has agreed to the terms of this Assurance based on, among other things, the representations made to the OAG by the Respondent and his counsel and the OAG's own factual investigation as set forth above. The Respondent represents and warrants that neither he nor his counsel has made any material representations to the OAG that are inaccurate or misleading. If any material representations by Respondent or his counsel are later found to be inaccurate or misleading, this Assurance is voidable by the OAG in its sole discretion.

25. No representation, inducement, promise, understanding, condition, or warranty not set forth in this Assurance has been made to or relied upon by the Respondent in agreeing to this Assurance.

General Principles:

26. Unless a term limit for compliance is otherwise specified within this Assurance, the Respondent's obligations under this Assurance are enduring. Nothing in this Agreement shall relieve Respondent of other obligations imposed by any applicable state or federal law or regulation or other applicable law.

27. Respondent agrees not to take any action or to make or permit to be made any public statement denying, directly or indirectly, any finding in the Assurance, or creating the impression that the Assurance is without legal or factual basis, except in the context of a litigation in which Respondent is a defendant.

28. Nothing contained herein shall be construed to limit the remedies available to the OAG in the event that the Respondent violates the Assurance after its effective date.

29. This Assurance may not be amended except by an instrument in writing signed on behalf of the Parties to this Assurance.

30. In the event that any one or more of the provisions contained in this Assurance shall for any reason be held to be invalid, illegal, or unenforceable in any respect, in the sole discretion of the OAG, such invalidity, illegality, or unenforceability shall not affect any other provision of this Assurance.

31. Respondent acknowledges that they have entered this Assurance freely and voluntarily and upon due deliberation with the advice of counsel.

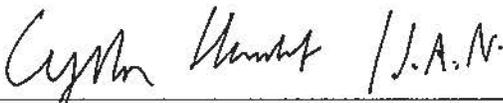
32. This Assurance shall be governed by the laws of the State of New York without regard to any conflict of laws principles.

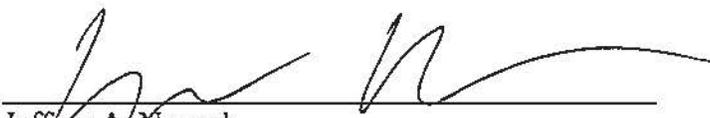
33. The Assurance and all its terms shall be construed as if mutually drafted with no presumption of any type against any party that may be found to have been the drafter.

34. This Assurance may be executed in multiple counterparts by the parties hereto. All counterparts so executed shall constitute one agreement binding upon all parties, notwithstanding that all parties are not signatories to the original or the same counterpart. Each counterpart shall be deemed an original to this Assurance, all of which shall constitute one agreement to be valid as of the effective date of this Assurance. For purposes of this Assurance, copies of signatures shall be treated the same as originals. Documents executed, scanned, and transmitted electronically and electronic signatures shall be deemed original signatures for purposes of this Assurance and all matters related thereto, with such scanned and electronic signatures having the same legal effect as original signatures.

35. The effective date of this Assurance shall be December 21, 2018.

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