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Attorney for Plaintiffs

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7/18/14
Filed
Margaret Mary McVeigh, P.J.Ch.

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION: GENERAL EQUITY
PASSAIC COUNTY
DOCKET NO. C-56-12

JOHN J. HOFFMAN,
Acting Attorney General of the State of New Jersey on
behalf of his office and
LAURA H. POSNER,
Chief of the New Jersey Bureau of Securities,

Plaintiffs,

v.

BRANDED MARKETING, LLC,
a New Jersey limited liability company and d/b/a
1800Tarjetas.com;
BRANDED MARKETING, INC.,
a Delaware corporation;
RICHARD JACKOWITZ,

individually and as President and Chief Executive
Officer of Branded Marketing, LLC;
ANTHONY UVA,
individually and as Chief Marketing Officer of Branded
Marketing, LLC;
PATRICK GAINEY,
individually and as Manager of Investor Relations of
Branded Marketing, LLC,

Defendants,

and

IT CONNECT, INC.,
a Delaware corporation,

Nominal Defendant.

Civil Action

**CONSENT ORDER AND
FINAL JUDGMENT AS TO
DEFENDANT PATRICK GAINEY**

THIS MATTER was brought before the Court by John J. Hoffman, Acting Attorney General of New Jersey (“Attorney General”), on behalf of his office and Laura H. Posner, Chief of the New Jersey Bureau of Securities (“Bureau Chief”) (collectively, “Plaintiffs”)¹ pursuant to N.J.S.A. 49:3-69(a) for violations of the New Jersey Uniform Securities Law (1997), N.J.S.A. 49:3-47 et seq., (“Securities Law”). The Plaintiffs and defendant Patrick Gainey (“Defendant Gainey”), through counsel (Nicholas Kant, Deputy Attorney General, appearing for Plaintiffs and Randy Pearce, Esq., appearing for Defendant Gainey) (collectively, “Parties”) have agreed to resolve the issues in controversy set forth in the Complaint filed in this matter, which alleges violations of the Securities Law, on the terms set forth in this Consent Order and Final Judgment (“Consent Order”), which terms have, with the consent of Plaintiffs and Defendant Gainey, been reviewed and approved by the Honorable Margaret Mary McVeigh, P.J. Ch.

FINDINGS OF FACT/CONCLUSIONS OF LAW

The Bureau Chief makes the following findings of fact and conclusions of law, which Defendant Gainey neither admits nor denies for purposes of settling this matter but admits for purposes of bankruptcy:

1. Defendant Gainey resides in Belle Mead, New Jersey.
2. Defendant Branded Marketing, LLC, (“BMLLC”) is a New Jersey limited liability company formed on or about March 7, 2007 and was principally located in Haskell, New Jersey. According to New Jersey Secretary of State, BMLLC’s limited liability status was revoked in 2010 for failing to file annual reports for two consecutive years.

¹ This action was commenced on behalf of former Attorney General Jeffrey S. Chiesa and former Bureau Chief Abbe R. Tiger. In accordance with R. 4:34-4, the caption has been revised to reflect the current Acting Attorney General and Bureau Chief.

3. Branded Marketing Inc., (“BMI”) is a Delaware corporation formed on or about January 6, 2010.
4. From at least 2007 to 2010, Defendant Gainey offered and sold limited liability interests issued by BMLLC (“BMLLC Interests”), promissory notes issued by BMLLC (“BMLLC Notes”) and stock issued by BMI (“BMI Stock”) to New Jersey investors.
5. The BMLLC Interests, BMLLC Notes and BMI Stock are securities as defined in N.J.S.A. 49:3-49(m).
6. Neither the BMLLC Interests, BMLLC Notes, nor BMI Stock were registered with the Bureau, federally covered, or exempt from registration.
7. The BMLLC Interests, BMLLC Notes and BMI Stock were required to be registered with the Bureau.
8. Each offer to sell and sale of the BMLLC Interests, BMLLC Notes, and/or BMI Stock by Defendant Gainey was a violation of N.J.S.A. 49:3-60.
9. At no time, was Defendant Gainey registered with the Bureau as an agent of BMLLC and/or BMI or in any other capacity nor was he exempt from registration.
10. Defendant Gainey represented BMLLC and/or BMI in effecting or attempting to effect transactions in unregistered securities from, in or within New Jersey, and, thus, acted as an “agent,” as defined in N.J.S.A. 49:3-56(a), which requires, among other things, that only persons registered with the Bureau may lawfully act as agents.
11. Each instance of Defendant Gainey acting as an unregistered agent constitutes a separate violation of N.J.S.A. 49:3-56(a).

THEREFORE, based on the Bureau Chief's foregoing findings of fact and conclusions of law, it is on this 18 day of July, 2014, **ORDERED AND AGREED THAT:**

PERMANENT INJUNCTIVE RELIEF

12. Defendant Gainey, individually and by or through any person, corporation, business entity, agent, employee, broker, partner, officer, director, attorneys-in-fact, stockholder and/or any other person who is directly or indirectly under their control or direction, are permanently restrained and enjoined from directly or indirectly:

- a. Violating the Securities Law;
- b. Engaging in the securities business in New Jersey in any capacity, including, but not limited to, acting as a broker-dealer, agent, investment adviser, investment adviser representative or otherwise;
- c. Issuing, offering the sale or selling, offering to purchase or purchasing, distributing, promoting, advertising, soliciting, negotiating, advancing the sale of and/or promoting securities, or advising regarding the sale of any securities, in any manner to, from, or within the State of New Jersey; and

d. Engaging in the conduct described in Plaintiff's Complaint filed in this matter.

13. Defendant Gainey is permanently enjoined from acting from and within the State of New Jersey as: an agent as defined in N.J.S.A. 49:3-49(b); a broker-dealer as defined in N.J.S.A. 49:3-49(c); an investment adviser as defined in N.J.S.A. 49:3-49(g); or an investment adviser representative as defined in N.J.S.A. 49:3-49(s).

14. Defendant Gainey is permanently enjoined from being a partner, member, officer or director of an issuer, broker-dealer or investment adviser, or from occupying a similar status or performing a similar function or from directly or indirectly controlling or being under common control or being controlled by an issuer, broker-dealer or investment adviser, or from acting as a broker-dealer, agent or investment adviser in this State.

15. Defendant Gainey is permanently enjoined from associating in any capacity with any broker-dealer or investment adviser doing business from, into or within the State of New Jersey, or from controlling an issuer doing business in New Jersey, or acting as an officer, director, or manager of an issuer doing business in New Jersey, or from supervising employees of an issuer doing business in New Jersey, as defined in N.J.S.A. 49:3-49(h).

16. Defendant Gainey is denied all exemptions contained in N.J.S.A. 49:3-50 subsection (a) paragraph 9, 10, and 11 and subsection (b), and the exemptions to the registration requirements provided by N.J.S.A. 49:3-56(b), N.J.S.A. 49:3-56(c) and N.J.S.A. 49:3-56(g).

RESTITUTION

17. Defendant Gainey is liable for restitution in the amount of \$110,000 (“Restitution”). The Restitution, which is immediately due and owing, shall be paid as follows: (a) Five Thousand and 00/100 Dollars (\$5,000) which is immediately due and payable by attorney trust account check or certified bank check payable to “State of New Jersey, Bureau of Securities” within three (3) business days of entry of this Consent Order by the Court; (b) equal monthly installments of One Thousand and 00/100 Dollars (\$1,000). The first installment of One Thousand and 00/100 Dollars (\$1,000) shall be due by September 1, 2014 and each subsequent installment shall be due on the first of the month thereafter until the Restitution shall be paid in full.

CIVIL MONETARY PENALTY

18. A civil monetary penalty may be imposed on Defendant Gainey pursuant to N.J.S.A. 49:3-70.1 for each violation of the registration provisions of the Securities Law of not more than \$10,000 for the first violation and not more than \$20,000 for a second and each subsequent violation. In view of the specific facts of this case, the terms of this Consent Order,

the permanent injunction agreed to by Defendant Gainey set forth above, the extent of the Defendant Gainey's investment of his own funds, and Defendant Gainey's financial condition, among other things, the civil monetary penalty assessed on Defendant Gainey is \$28,000 but it is suspended and will not be collected by the Bureau at this time.

FINAL JUDGMENT

19. Final judgment is hereby entered against Defendant Patrick J. Gainey, M.D. in the amount of One Hundred Ten Thousand Dollars (\$110,000) in restitution pursuant to N.J.S.A. 49:3-69(a)(2) for violations of N.J.S.A. 49:3-56(a) and N.J.S.A. 49:3-60.

ADDITIONAL PROVISIONS

20. Defendant Gainey's cooperation with Plaintiff in this litigation, which is material to the Bureau, shall include, but not be limited to:

- a. Voluntarily and promptly appearing, without a subpoena and at his own expense, to serve as a witness at trial in this litigation or any related matter and to testify completely and truthfully;
- b. Voluntarily attending meetings with Plaintiff's counsel at Plaintiffs' offices at a ~~time and date reasonably required by Plaintiff's counsel prior to the first day of trial in this litigation for witness preparation or any other reason;~~
- c. Voluntarily and promptly responding to Plaintiffs' requests for documents or evidence; and
- d. Cooperating fully and promptly with the Bureau and/or the Office of the Attorney General in any pending or subsequently initiated inquiry, investigation, proceeding or other process relating to the subject of this Consent Order, which shall, without respect to registration status with the Bureau, voluntarily include production of documents, appearance at times and locations requested by the Bureau, and disclosure of any information relevant to the subject matter of the Consent Order.

21. Failure to perform under any of the conditions of this Consent Order shall be deemed a failure to cooperate under the Securities Law and entitle the Bureau to specific performance, and any other available remedies.

22. The Bureau Chief is entering into this Consent Order with Defendant Gainey based upon his statements in the investigation, information obtained through discovery in this litigation and representations about his financial situation.

23. All payments shall be made by attorney trust account check or certified bank check, payable to "State of New Jersey, Bureau of Securities" and delivered to the Bureau Chief at the address stated below. The Bureau Chief shall determine, in her sole discretion, how to apply payments made toward the final judgment and the method of distribution of restitution.

24. In the event that Defendant Gainey violates or breaches any provision of this Consent Order, all unpaid amounts under this Consent Order shall immediately be accelerated and due and payable, including the \$28,000 suspended penalty. Upon such occurrence, Plaintiffs shall provide written notice to Defendant Gainey of his noncompliance, and afford him a fifteen (15) calendar-day period within which to cure any such noncompliance. In the event of Defendant Gainey's failure to cure any such noncompliance, the Bureau may apply to the Court to enter the \$28,000 suspended penalty, and/or take any other appropriate action. Defendant Gainey shall be liable to the Bureau for all costs and attorney's fees incurred by Defendant Gainey's violation and/or breach of any provision of this Consent Order. Any civil monetary penalties paid shall be deposited into the Securities Enforcement Fund, pursuant to N.J.S.A. 49:3-66.1.

25. This Consent Order constitutes the entire agreement between the Parties and shall bind the Parties and their successors in interest as to the allegations in the Complaint for violations of the Securities Law. In no event shall assignment of any right, power or authority under this Consent Order avoid compliance with this Consent Order.

26. This Consent Order is entered into without prejudice to any investigation or action or proceeding that may be taken by any other state entities.

27. This Consent Order shall be modified only by a written instrument signed by or on behalf of the Parties.

28. This Consent Order is agreed to by the Parties and entered into for settlement purposes only. Neither the fact of, nor any provision contained in this Consent Order nor any action taken hereunder shall constitute, or be construed as an approval, sanction or authorization by the Attorney General, the Bureau Chief, the Bureau or any other governmental unit of the State of any act or practice of Defendant Gainey.

29. This Consent Order shall not bind or be construed to limit or affect the rights of any persons any person not a party hereto.

30. Nothing contained herein shall in any manner be construed to limit or affect any position that the Bureau or any other governmental agency may take in any future or pending action not specifically encompassed herein.

31. Except as otherwise explicitly provided for in this Consent Order, nothing herein shall be construed to limit the authority of the Attorney General or the Bureau Chief to protect the interests of the State or the people of the State.

32. The Parties have negotiated, jointly drafted and fully reviewed the terms of this Consent Judgment and the rule that uncertainty or ambiguity is to be construed against the drafter shall not apply to the construction or interpretation of this Consent Judgment.

33. If any portion of the Consent Order is rendered invalid or unenforceable, the remaining terms and provisions shall remain in full force and effect, unless the portion rendered invalid or unenforceable is a material term.

34. Defendant Gainey has read this Consent Order, understands it, and agrees to be bound by its terms.

35. The parties acknowledge that for purposes of enforcement of this Consent Order, New Jersey law shall govern the terms and provisions herein.

36. This court retains jurisdiction to enforce, modify or otherwise hear any application arising from the terms of this Consent Order.

37. Defendant Gainey shall not represent or imply that any act or practice hereinafter used or engaged in by him has been required or approved, in whole or part, by the State of New Jersey, the Attorney General of New Jersey, the Division of Law, the Bureau or any New Jersey agencies, agents, employees or subdivisions.

38. No employee, official of or person representing the Bureau or the State of New Jersey has made any additional promise or representation to Defendant Gainey regarding this Consent Order.

39. This Consent Order may be signed in counterparts, each of which shall be deemed an original.

40. As used in this Consent Order, the plural shall include the singular and the singular shall include the plural. In addition, "or" and "and" shall be interpreted conjunctively.

41. Defendant Gainey waives any right to appeal this Consent Order.

42. By the Parties' signatures below, in consideration of parties' desire to resolve the issues herein and having had full opportunity to consult with counsel, Defendant Gainey hereby consents to the jurisdiction of the Bureau and voluntarily enters into this Consent Order with full knowledge and understanding of the obligations and duties imposed and waives any right to

assert any defenses, or to raise any challenge, that Defendant Gainey otherwise may have, to the Consent Order.

43. Defendant Gainey represents that he has been given ample opportunity to seek legal advice prior to signing this Consent Order.

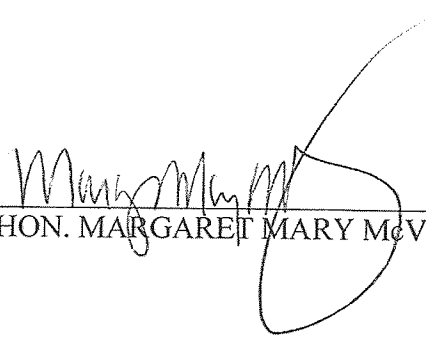
44. Except as otherwise provided herein, any notices or other documents required to be sent to the Parties pursuant to this Consent Order shall be sent by the United States Mail, Certified Mail Return Receipt Requested, or other nationally recognized courier service that provides for tracking services and identification of the person signing for the documents. The notices and/or documents shall be sent to the following addresses:

For Plaintiffs:

Bureau Chief
Bureau of Securities
153 Halsey Street, 6th Floor
P.O. Box 47029
Newark, New Jersey 07101

~~For Defendant Gainey:~~

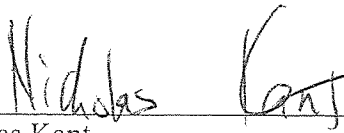
Pearce Law, LLC
Court Plaza North
25 Main Street, Suite 602
Hackensack, New Jersey 07601-9007



HON. MARGARET MARY McVEIGH, P.J. CH.


CONSENT TO THE FORM, CONTENT
AND ENTRY OF THIS CONSENT ORDER
AND FINAL JUDGMENT:

JOHN J. HOFFMAN
ACTING ATTORNEY GENERAL OF NEW JERSEY
Counsel for Plaintiffs

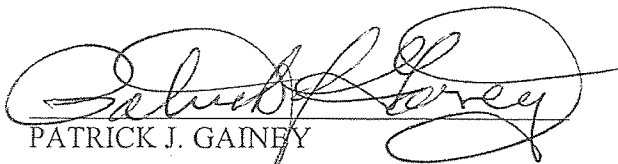
By: 
Nicholas Kant
Deputy Attorney General

Dated: 7/17/14

PEARCE LAW, LLC
Court Plaza North
25 Main Street, Suite 602
Hackensack, New Jersey 07601-9007
Counsel for Defendant Patrick J. Gainey

By: 
Randy T. Pearce, Esq.

Dated: 7/17/14


PATRICK J. GAINEY

Dated: 7/17/14