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FILED
MAY 24 2013
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SUPERIOR COURT OF NEW JERSEY
BERGEN COUNTY
CHANCERY DIVISION: EQUITY
DOCKET NO. BER-C-204-11

JEFFREY S. CHIESA, ¹	:	
Attorney General of New Jersey,	:	Civil Action
on behalf of	:	
ABBE R. TIGER, Chief of the	:	
New Jersey Bureau of Securities,	:	
	:	CONSENT ORDER AND
Plaintiff,	:	FINAL JUDGMENT AS
	:	TO DEFENDANT
v.	:	CANDACE FAGAN
THOMAS J. FAGAN,	:	
Individually and as Chairman of	:	
the Board, President and	:	
Chief Executive Officer of	:	
Energex Systems, Inc.,	:	
Managing Member and President of	:	
Arbios Acquisition Partners, LLC,	:	
and as Chairman of the Board,	:	
President and Chief Executive	:	
Officer of Arbios Systems, Inc.;	:	
CANDACE FAGAN, Individually; and	:	
ENERGEX SYSTEMS, INC.,	:	
a Delaware corporation;	:	

¹ This action was commenced by former Attorney General Paula T. Dow. In accordance with R. 4:34-4, the caption has been revised to reflect the current Attorney General, Jeffrey S. Chiesa.

ARBIOS ACQUISITION PARTNERS, LLC, :
 a Delaware limited liability :
 company; and :
 ARBIOS SYSTEMS, INC., :
 a Delaware corporation, :
 :
 :
 Defendants. :
 :
 _____ :

This matter was initially presented to the Court by the Attorney General of New Jersey, on behalf of Abbe R. Tiger, Chief of the New Jersey Bureau of Securities (“Plaintiff” or “Bureau Chief”), (Deputy Attorneys General Victoria A. Manning and Paul E. Minnefor, appearing), 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”). Plaintiff and Defendant Candace Fagan (“C-Fagan”) through counsel (John J. McCann, Esq., appearing), have agreed to resolve any and all issues in controversy in this action on the terms set forth in this Final Judgment and Consent Order (“Consent Order”). On October 18, 2011, the Court appointed William D. Wallach, Esq. as the Special Fiscal Agent over Defendants Energex Systems, Inc. (“Energex”), Arbios Systems, Inc. (“ASI”) and Arbios Acquisition Partners, LLC (“AAP”) with the powers set forth in N.J.S.A. 49:3-69(c), among others, and on September 26, 2012, Mr. Wallach was appointed Receiver over Energex (“Special Fiscal Agent/Receiver”). On September 26, 2012, the Honorable Harry G. Carroll entered an Order Granting In Part Plaintiff’s Motion for Partial Summary Judgment against Defendant Thomas J. Fagan, pro se, (“Fagan”) on the following:

- a) Count IV on liability against defendant Fagan for acting as an unregistered agent in connection with sales of stock issued by defendant Energex, in violation of N.J.S.A. 49:3-56(a);

- b) Count VI on liability against defendant Fagan for selling unregistered securities in connection with the Energex stock sales, in violation of N.J.S.A. 49:3-60;
- c) Count V on liability against defendant Energex for employing an unregistered agent, in violation of N.J.S.A. 49:3-56(h); and
- d) Count VI on liability against defendant Energex for selling unregistered securities, in violation of N.J.S.A. 49:3-60.

The Court's September 26 Opinion ("Sept. 26 Opinion") included, among others, the following findings of fact and conclusions of law:

- a) Starting in at least 2002, Fagan has served as Chairman of the Board, President, and Chief Executive Officer of Energex. Sept. 26 Opinion at 7.
- b) Fagan created the subscription agreement that was provided to Energex shareholders. Id.
- c) Every Energex stock certification and subscription agreement was either personally signed by Fagan or was signed on his behalf by an Energex employee who was authorized by Fagan to use his signature stamp. Id.
- d) From at least 2000 to 2002, Fagan personally spoke with most Energex shareholders before they invested and at least initially Fagan was personally responsible for everything that prospective shareholders were told about investing in Energex. Id.
- e) In their totality, the facts demonstrate Fagan's control over Energex and his participation in the sale of Energex securities. Sept. 26 Opinion at 8.
- f) Fagan set the offer price per share of the Energex stock. Sept. 26 Opinion at 7.
- g) From 2000 to February 18, 2009, at least 344 transactions in Energex stock occurred. Id.

- h) As of September 21, 2009, Fagan served as the Director, Chairman of the Board, President, and Chief Executive Officer of ASI. Sept. 26 Opinion at 8.
- i) After September 21, 2009, approximately fifty one investors purchased ASI stock, at least thirteen of whom resided in New Jersey. Id.
- j) In their totality, the facts demonstrate Fagan's control over ASI and his participation in the sale of ASI's securities. Id.
- k) Fagan was not registered with the Bureau. Sept. 26 Opinion at 7.
- l) Fagan acted as an agent of Energex and ASI, as defined by N.J.S.A. 49:3-49(b) of the Securities Law. Id. at 7-8.
- m) The ASI Promissory Notes are securities. Sept. 26 Opinion at 8.
- n) Fagan acted as an unregistered agent in selling Energex stock in violation of N.J.S.A. 49:3-56(a). Id. at 8, 10.
- o) Energex violated N.J.S.A. 49:3-56(a) by employing Fagan, who was an unregistered agent. Id. at 10.
- p) Fagan and Energex violated N.J.S.A. 49:3-60 by selling the Energex stock, which was not registered with the Bureau and not exempt from registration. Id. at 11.

In addition to the Court's findings in the September 26, 2012 Opinion, the Bureau Chief makes the following findings of fact and conclusions of law, which C-Fagan neither admits nor denies:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Energex was formed by defendant Fagan in Delaware on August 4, 1999 under the name Orthomedics, Inc. Its name was changed to Orthosonix, Inc. on March 23, 2000 and

later to Energex Systems, Inc. on or about January 16, 2003. At all relevant times from 1999 through 2011, Energex was located in Old Tappan, New Jersey; then Emerson, New Jersey; and later in Allendale, New Jersey.

2. Fagan, a resident of Emerson, New Jersey, was the founder, Chairman of the Board, President and Chief Executive Officer of Energex. He also functioned as the de facto Secretary and Treasurer of Energex, although he used the signature stamp of Richard Tienken to sign the Energex stock certificates as the nominal Treasurer and Secretary of Energex. Fagan had full control over Energex's finances. Fagan contends that he and his wife, defendant C-Fagan, are shareholders of Energex.

3. From at least 1999 to 2011, Fagan effected the sale of Energex stock to approximately 784 investors in approximately 26 states. The Energex stock sales raised approximately \$9.5 million.

4. Between in or about 2000 and through in or about April 2011, the main source of Energex's funding was the approximately \$9.5 million generated from the sale of the Energex Stock, plus a \$750,000.00 payment for the Hemomodulator device. It also received nominal revenue from the sale and use payments of the "Energex device." All other funds used to operate Energex were from the sale of the Energex stock.

5. Energex, through Fagan, failed to disclose to investors certain material information prior to the sales of the Energex stock.

6. On or about September 21, 2009, Fagan became the Chairman of the Board, CEO and President of ASI, and took control of ASI through its Chapter 11 bankruptcy reorganization plan, and thereafter acted as an unregistered agent in effecting or attempting to effect the sale of

securities in the form of ASI stock ("ASI Stock") sold outside of the Chapter 11 plan of reorganization.

7. Fagan caused investor funds raised by the sale of Energex Stock after 2009 to be paid, at times, to AAP, which Fagan formed to participate in the ASI bankruptcy reorganization plan. Similarly, Fagan caused investor funds raised for the sale of ASI Stock on or after September 21, 2009, to be paid, at times, to Energex. Additionally, Fagan solicited investors to purchase the Energex Stock and the ASI Stock on Energex letterhead, signed by Fagan as "Partner" of AAP, prior to the September 21, 2009 effective date of the ASI bankruptcy plan. As a result, Fagan caused AAP and Energex to act as unregistered broker-dealers as defined in N.J.S.A. 49:3-49(c).

8. In or about December 2009 through at least May 2010, Fagan, effected or attempted to effect the sale of at least seven (7) ASI Promissory Notes issued by ASI, through Fagan, which are "securities" as defined in the Securities Law.

9. The ASI Promissory Notes were not registered with the Bureau, but were required to be registered with the Bureau and were not exempt from registration.

10. Funds raised from investors by Fagan from the sale of the unregistered Energex Stock and the ASI Stock were paid to either Energex or AAP. Funds raised from the sale of the ASI Promissory Notes were paid to ASI.

11. At all relevant times, Fagan controlled the bank accounts of Energex, AAP and ASI.

12. Fagan commingled investor funds between Energex, AAP and ASI, resulting in a financial benefit to Energex.

13. Fagan made inter-company transfers of funds between Energex, AAP and ASI, including purported "loans" to Energex, and transferred thousands of dollars of AAP and ASI funds to himself.

14. Fagan withdrew hundreds of thousands of dollars from AAP's account through "debit" cash transactions.

15. The AAP funds were used, in great part, for Fagan's personal benefit.

16. Energex, through Fagan:

- a. violated the antifraud provisions of the Securities Law, specifically, N.J.S.A. 49:3-52(b) and N.J.S.A. 49:3-52(c); and
- b. acted as a broker-dealer without registration, in violation of N.J.S.A. 49:3-56(a).

17. AAP, through Fagan:

- a. violated the antifraud provisions of the Securities Law, specifically, N.J.S.A. 49:3-52(c);
- b. sold unregistered securities in the form of the Energex Stock, in violation of N.J.S.A. 49:3-60; and
- c. acted as a broker-dealer without registration, in violation of N.J.S.A. 49:3-56(a).

18. ASI, through Fagan:

- a. violated the antifraud provisions of the Securities Law, specifically, N.J.S.A. 49:3-52(c);

- b. sold unregistered securities in the form of the Energex Stock, in violation of N.J.S.A. 49:3-60; and
- c. employed Fagan as an unregistered agent, in violation of N.J.S.A. 49:3-56(h).

19. Fagan failed to disclose to investors certain material information prior to the sale of the Energex stock including, but not limited to, Energex's funds would be used to pay for C-Fagan's personal expenses.

20. C-Fagan did not have a legitimate claim to the funds used to pay her personal expenses.

21. C-Fagan contends she had no knowledge that corporate funds were being used by Fagan to pay C-Fagan's personal expenses.

22. On or about May 4, 2009, C-Fagan refinanced the mortgage loan on her Emerson, New Jersey home and caused \$99,111.83 from the equity in the home to be transferred to the law firm of Olshan, Grundman, Frome, Rosenzweig & Wolosky, LLP, counsel for Arbios Systems, Inc., for the use of defendant Arbios Acquisition Partners, LLC as funder of defendant Arbios Systems, Inc.'s Chapter 11 bankruptcy plan of reorganization, filed in the United States Bankruptcy Court, District of Delaware, Case No. 09-10082.

23. Records from ASI's stock transfer agent indicate that Fagan and C-Fagan own approximately 4,687,500 shares in ASI, which may have been issued in consideration of the \$99,111.83.

24. C-Fagan is also an Energex shareholder.

25. The Special Fiscal Agent/Receiver has filed three (3) reports with this Court

dated December 1, 2011, June 29, 2012 and January 18, 2013, respectively. He determined that Energex, ASI and AAP were no longer operating and their future was uncertain, and subsequently that the entities would not be reorganized and liquidation and an orderly winding down was appropriate.

THEREFORE, based on the Court's September 26, 2012 Order Granting In Part Plaintiff's Motion for Partial Summary Judgment against Fagan, and the Bureau Chief's foregoing findings of facts and conclusions of law, it is on this 24th day of May, 2013, ORDERED AND AGREED THAT:

26. C-Fagan shall disgorge the sum of \$20,000.00 pursuant to N.J.S.A. 49:3-69(a)(2) upon signing this Consent Order ("Disgorgement Amount") and final judgment shall be entered against C-Fagan for the Disgorgement Amount.

27. The Disgorgement Amount shall be paid to the Special Fiscal Agent/Receiver") to be applied to administrative expenses approved by the Court. Payment of the \$20,000.00 shall be made as follows: (a) \$5,000.00 within ten (10) days of entry of this Consent Order; (b) equal payments of \$416.66 which are due and payable on the first day of each month thereafter for 36 months.

28. The asset freeze set forth in the August 18, 2011 Consent Order Imposing Preliminary Injunctive Relief and Asset Freeze (Limited to Real Property) Upon Defendant Candace Fagan be and is hereby vacated, and Plaintiff shall file a Discharge of Lis Pendens filed upon her residence within ten (10) days of entry of this Consent Order. This Consent Order will be filed with the Docketing Section of the Superior Court.

29. C-Fagan is permanently enjoined from violating Securities Law and engaging in the conduct alleged in the Verified Complaint.

30. C-Fagan shall completely and voluntarily cooperate with Plaintiff and the Court appointed Special Fiscal Agent/Receiver over Energex, ASI and AAP, in any case, proceeding, action, investigation and/or cause relating to any of the allegations in the Verified Complaint. C-Fagan's cooperation, which is material to Plaintiff, shall include, but not be limited to: (a) at Plaintiff's request, C-Fagan voluntarily and promptly appearing, without a subpoena and at her own expense, to serve as a witness at trial in this litigation in order to testify completely and truthfully and without the assertion of any privilege other than the attorney-client privilege; (b) C-Fagan voluntarily and promptly attending and completing preparation sessions at Plaintiff's offices at least fourteen days prior to the first day of trial in this litigation; (c) C-Fagan voluntarily and promptly responding to Plaintiff's requests for documents or evidence; (d) C-Fagan voluntarily and promptly responding to any written and/or oral inquiry and/or request by Plaintiff by or through her designee and/or counsel, and/or the Court appointed Special Fiscal Agent/Receiver over Energex, ASI and AAP; and (e) C-Fagan cooperating with the Receiver in the recovery of assets and causes of action.

31. Immediately upon the entry of this Consent Order by the Court, all interests, claims and rights of C-Fagan, including any person or entity controlled by C-Fagan holding such an interest, claims or right on behalf of C-Fagan, and/or to whom a court finds that C-Fagan fraudulently or preferentially transferred such an interest, claim, or right, against the Receivership or to any property or asset that is or becomes part of the Receivership, are hereby transferred to the Special Fiscal Agent/Receiver including, but not limited to, all claims and rights stated in any

Proof(s) of Claim that C-Fagan has the right to file with the Receiver in this case. In addition, C-Fagan hereby waives the right to file any Proof(s) of Claim with the Receiver in this case.

32. C-Fagan waives the right to seek recovery based on any claims, including known, unknown, accrued, unaccrued, vested and unvested claims, from the assets of the AAP, ASI and/or the Receivership and from participating in any distribution of the assets of AAP, ASI and/or the Receivership.


33. Nothing in this Final Judgment and Consent Order shall in any manner be construed to limit or affect the rights of any persons who may have a claim against defendant C-Fagan.

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

35. This Consent Order constitutes the entire agreement between C-Fagan and the Bureau Chief and shall bind C-Fagan.

36. Nothing contained herein shall in any manner be construed to limit or affect any position that the Bureau Chief may take in settlement with any party to this action.

37. Unless otherwise prohibited by law, any signatures by the parties required for entry of this Consent Order may be executed in counterparts, each of which shall be deemed an original, but all of which shall together be one and the same Consent Order.



PETER E. DOYNE, A.J.S.C.

*No objection to
for a entry*

We hereby consent to the form and entry of the within Final Judgment and Consent Order as to Candace Fagan.

Law Offices of John McCann, LLC
26 Franklin Street
Tenafly, New Jersey 07670
Counsel for Candace Fagan

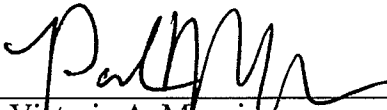
By: _____
John McCann, Esq.

Dated: _____

Candace Fagan

Dated: _____

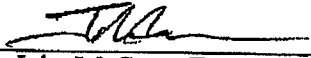
JEFFREY S. CHIESA
ATTORNEY GENERAL OF NEW JERSEY
Counsel for Plaintiff

By:  _____
~~Victoria A. Manning~~
Deputy Attorney General
Paul E. Minnator


Dated: 5/24/13

We hereby consent to the form and entry of the within Final Judgment and Consent Order as to Candace Fagan.

Law Offices of John McCann, LLC
26 Franklin Street
Tenafly, New Jersey 07670
Counsel for Candace Fagan

By: 
John McCann, Esq.

Dated: 5/10/13


Candace Fagan

Dated: 5/10/13

JEFFREY S. CHIESA
ATTORNEY GENERAL OF NEW JERSEY
Counsel for Plaintiff

By: _____
Victoria A. Manning
Deputy Attorney General

Dated: _____