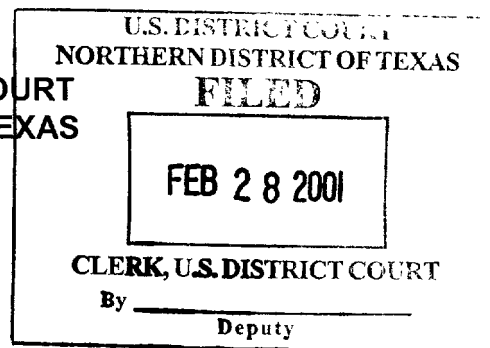


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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION



SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

vs.

SMART-MART, INC.,
A Texas Corporation,
TIMOTHY McMURRAY, and
BRADLEY D. WOY

Defendants.

Civil Action No.

3-01CV0397-M

COMPLAINT

Plaintiff Securities and Exchange Commission alleges as follows:

SUMMARY

1. This matter involves securities fraud and registration violations of the federal securities laws by Defendants Smart-Mart, Inc., Timothy McMurray and Bradley D. Woy. From about March 1998 through about February 1999, Defendants McMurray and Woy engaged in a fraudulent scheme to offer and sell unregistered common stock of Smart-Mart, a Dallas-based Internet retail shopping center. During that period, Defendants raised approximately \$2.4 million from at least 720 investors nationwide and in Canada.

2. In the course of offering and selling the unregistered common stock of Smart-Mart, McMurray and Woy engaged in numerous misrepresentations and omissions of material fact concerning, among other things, Smart-Mart's business

prospects, the potential liquidity and return on investment, the qualifications of Smart-Mart's principals and the use of investor funds. Specifically, Defendants represented that Smart-Mart was a thriving company with thousands of products ready to deliver, with new vendor agreements being negotiated continuously. In addition, Defendants told investors that Smart-Mart would conduct an initial public offering ("IPO") in the near future, and that stock purchased for \$1 per share would increase in value to \$20 per share. To bolster this claim, Defendants touted McMurray as a "Start Up and Turnaround Specialist." Furthermore, Defendants stated that investor funds would be used to develop and market Smart-Mart's products and for working capital.

3. In reality, Smart-Mart never had more than minimal operations, was not negotiating new vendor agreements and Defendants took no steps to initiate an IPO. Contrary to Defendants' claims, moreover, McMurray was a convicted felon without the business expertise he was represented to possess. In light of these facts, representations concerning the future value of Smart-Mart stock had no reasonable basis. Finally, McMurray and Woy diverted a large portion of investor funds for personal and unauthorized business uses.

4. By engaging in the conduct detailed in this Complaint, Defendants Smart-Mart, McMurray and Woy, directly or indirectly, singly or in concert, have engaged in, and unless enjoined will again engage in, transactions, acts, practices and courses of business that constitute violations of Sections 5(a), 5(c) and 17(a) of the Securities Act of 1933 ("Securities Act"), [15 U.S.C. §§77e(a), 77e(c) and 77q(a)], Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act"), [15 U.S.C. §78j(b)], and Rule 10b-5, [17 C.F.R. §240.10b-5], promulgated thereunder.

JURISDICTION AND VENUE

5. This Court has jurisdiction over this action, and venue is proper, pursuant to Section 22(a) of the Securities Act [15 U.S.C. §77v(a)] and Section 27 of the Exchange Act [15 U.S.C. §78aa].

6. The Commission brings this action pursuant to the authority conferred upon it by Section 20(b) of the Securities Act, [15 U.S.C. §77t(b)], and by Section 21(d) of the Exchange Act, [15 U.S.C. §78u(d)].

7. Defendants, directly or indirectly, have made use of the means and instrumentalities of interstate commerce, or of the mails, or of the facilities of a national exchange in connection with the acts, practices, and courses of action alleged herein. Certain of the transactions, acts, practices and courses of business alleged herein took place in the Northern District of Texas.

DEFENDANTS

8. **Smart-Mart, Inc.**, a Texas corporation located in Dallas, Texas, was incorporated on September 22, 1997. Smart-Mart operated a multi-level marketing Internet retail shopping center, found at www.smart-mart.com, which provided a 24-hour Internet retail directory providing sundry products and services to Smart-Mart members with special access cards. Smart-Mart ceased its business operations in October 1999. Neither Smart-Mart securities nor any offer or sale of Smart-Mart securities have ever been registered with the Commission or any state.

9. **Timothy A. McMurray**, age 46 and a resident of Dallas, Texas, was a founder of Smart-Mart and was the president, chief executive officer and chairman of the board until he resigned in October 1998. McMurray was convicted of bank fraud for

a check-kiting scheme in January 1993, and was sentenced to five years probation. McMurray asserted his Fifth Amendment privilege against self-incrimination and refused to provide testimony in the staff's investigation.

10. **Bradley D. Woy**, age 30 and a resident of Irving, Texas, was retained by Smart-Mart as a consultant in February 1998. In May 1998, Woy was hired by Smart-Mart as Operations Manager. In October 1998, Woy was promoted to the offices of president, chief executive officer and chief operating officer of Smart-Mart following McMurray's resignation.

STATEMENT OF FACTS

Business of Smart-Mart

11. Smart-Mart was a name-brand retailer that sold products and services, such as apparel, office supplies and electronics, at below retail cost on the Internet at *www.smart-mart.com*. Smart-Mart's website allowed shoppers to view and purchase products through an interactive web television, a purportedly "high-tech" feature that the company touted to consumers. In reality, this feature was available in the same manner from almost any on-line retailer.

12. Smart-Mart marketed its products through the sale of memberships to its website. These memberships provided participants various options consisting of three basic features: unlimited access to Smart-Mart's Internet shopping center; commissions for recruiting new members; and access to various other Internet services and devices.

The Offer and Sale of Smart-Mart Stock

13. From about March 1998 through at least February 1999, Smart-Mart raised at least \$2.4 million from some 720 investors nationwide and in Canada through the sale of common stock in a purported private placement offering. Defendants marketed the unregistered Smart-Mart common stock through several principal means: (1) soliciting members of the shopping service through e-mail spams; (2) conducting conference calls and informational seminars to simultaneously solicit company memberships and stock sales; (3) inviting prospective investors to Smart-Mart's offices where McMurray and Woy personally solicited them to invest; and (4) encouraging existing members to recruit new members and simultaneously promote the sale of Smart-Mart stock.

14. Prospective investors were instructed to contact Smart-Mart about the investment and, upon the payment of their monies, entered into a Subscription Agreement. According to the Subscription Agreement, drafted by McMurray, the stock was to be sold at \$1 per share with a 100 share minimum investment, and a maximum purchase of 50,000 shares.

15. To facilitate the sale of Smart-Mart stock, McMurray also drafted a "Private Placement Disclosure Document" ("PPDD"). The PPDD was distributed to only a portion of the Smart-Mart investors. Moreover, while the PPDD contained certain disclosures relating to the risks involved in the Smart-Mart investment, the document also contained false and misleading information and failed to disclose material information. Furthermore, those investors who received the PPDD were also subjected to false and misleading information as set forth below.

Defendants' Misrepresentation and Omissions

16. In the course of offering and selling Smart-Mart stock, Defendants made numerous misrepresentations and omissions of material facts both orally and in writing. False and misleading information was disseminated through mass e-mail messages, as well as handouts and brochures disseminated at some of the informational seminars conducted by McMurray and Woy. Also, investors were directed to the Company's website which included similar information about the company's purported business activities and plans. In addition, false and misleading statements described below were made orally during the seminars and conference calls, as well as in follow-up communications with investors.

17. Defendants represented to investors and prospective investors that Smart-Mart had a thriving business positioned for substantial growth. Investors were told that Smart-Mart had thousands of products ready to sell and deliver daily, and that it was consistently negotiating deals to sell products for new vendors. In reality, Smart-Mart sold only approximately \$130,000 of its products during its entire existence and there were no ongoing negotiations to secure new products.

18. Smart-Mart, McMurray and Woy misrepresented to investors that an IPO was imminent and that the value of Smart-Mart stock would rise substantially as a result. Essentially, investors were told that the IPO was planned to take place either before the end of 1998 or early in 1999 at a minimum opening price of \$5 per share. Indeed, some investors were informed that shares purchased for \$1 would be worth as much as \$20 per share when the company went public. Also, investors were told that they would be able to freely trade their shares on the first day the company went public.

Moreover, McMurray even claimed in one e-mail that “investment bankers, who are knowledgeable of the market and our [Smart-Mart] financial position in it, feel, as do we, that a Public Offering is the best vehicle for achieving our capital goals...We feel that our Members should have the opportunity to participate in the potential capital appreciation of the IPO.” McMurray and Woy pressured investors to make rapid decisions to purchase Smart-Mart stock by claiming that there were a limited number of shares available on a first come, first serve basis.

20. In reality, Smart-Mart, McMurray and Woy never took any significant steps to retain an underwriter or legal counsel to initiate an IPO. Further, Smart-Mart had no audited financials statements and did not hire an auditor. Accordingly, there was never any basis for representing that an IPO would take place in such a short time frame or that investors would soon be able to sell their shares. Furthermore, there was also no basis for the assertion that Smart-Mart stock would have a minimum opening price of \$5 per share or would increase in value to as much as \$20 had no basis in fact.

21. Defendants also failed to disclose facts concerning Smart-Mart's business and financial condition that made the likelihood of a successful IPO and a subsequent rise in the price of Smart-Mart shares remote. Investors were not told that the vast majority of company revenues were derived from the sale of memberships and stock, while only a small percentage of revenue actually came from the sale of Smart-Mart products.

22. While misrepresenting the success and prospects of Smart-Mart, Smart-Mart, McMurray and Woy also failed to disclose financial difficulties that Smart-Mart was experiencing prior to and during the private placement offering. For instance, they failed

to disclose that, in June 1998, the company had received a demand for payment and notice of intent to accelerate payment on a \$65,000 promissory note upon which it had defaulted. Subsequently, the creditor filed suit against Smart-Mart for payment. The lawsuit also was never disclosed to investors. Moreover, Smart-Mart's bank accounts often had negative balances and the company wrote "hot checks" to numerous vendors. In light of the true facts concerning Smart-Mart's business and financial condition, Defendants positive projections about the purported IPO price and the claim that the stock would reach \$20 within a short time were highly misleading.

23. Defendants further failed to disclose that certain favored individuals received "free shares" during the purported private placement. While the investors generally paid \$1 per share for the stock, numerous shares were issued to at least 25 individuals, apparently without payment of any consideration.

24. In addition, Smart-Mart offering materials and its website contained false and misleading statements concerning the experience and qualifications of McMurray. Defendants touted McMurray as a "Startup and Turnaround Specialist" with extensive experience in a number of business ventures from start-ups to turnarounds and mergers, public and private, the largest of which was valued at \$60 million. The promotional materials further indicated that McMurray's expertise covered a large variety of industries, including manufacturing, construction and marketing. In reality, the Commission is informed and believes that McMurray had not been involved in any start-up companies or mergers prior to his involvement with Smart-Mart.

25. While touting the business experience and expertise Smart-Mart's chief executive, Defendants failed to disclose that McMurray had, in fact, been convicted on

federal bank fraud charges in January 1993. Instead of disclosing this fact, the PPDD made the deceitful statement that no corporate officer had been convicted of a crime in the “previous five years.” McMurray’s conviction had occurred five years and two months prior to dissemination of the PPDD. In light of the positive representations concerning McMurray’s background, failure to disclose McMurray’s felony conviction was misleading.

26. Finally, Smart-Mart, McMurray and Woy made material misrepresentations and omissions concerning the use of investor funds. Investors and prospective investors were told that funds raised in the Smart-Mart private placement would be used for the development and marketing of Smart-Mart’s products and for the company’s working capital and operations. Instead, Defendants misappropriated a significant portion of the funds collected from investors. McMurray and Woy used proceeds from the offering to pay themselves exorbitant salaries, take extravagant trips, purchase or lease several expensive automobiles, pay the mortgages and maintenance on their residences, pay personal legal fees and make other unauthorized and undisclosed expenditures.

Post-Offering Lulling Activities

27. After completion of the Smart-Mart offering, Defendants continued to lull investors with false and misleading statements concerning the business prospects of Smart-Mart, as well as the reasons for Smart-Mart’s lack of success. Smart-Mart and Woy represented that the company was poised to unveil a new technology called “Ahsum.com.” and told investors that the concentration of resources on this new technology was delaying the promised IPO. In fact, Ahsum.com was never “unveiled.”

28. Additionally, Smart-Mart and Woy represented to investors that Smart-Mart's prospects had been damaged because a publicly traded company had reneged on a "letter of commitment" to provide funding. Woy told investors that Smart-Mart had initiated legal action against the publicly-traded company and that investors would be repaid their principal once a judgment was rendered in favor of Smart-Mart. Woy failed to disclose that the other company had refused to provide funding because Smart-Mart had misrepresented to the company, as it had to its investors, the true state of its business operations and financial condition. As might be expected, investors have not been repaid.

FIRST CLAIM

Violations Of Sections 5(a) And 5(c) Of The Securities Act

29. Paragraphs 1 through 28 are hereby realleged and incorporated by reference herein.

30. Smart-Mart, McMurray and Woy, directly or indirectly, singly or in concert with others, have been offering to sell, selling and delivering after sale, certain securities and have been, directly and indirectly, (a) making use of the means and instruments of transportation and communication in interstate commerce and of the mails to sell securities, through the use of written contracts, offering documents and otherwise, (b) carrying and causing to be carried through the mails and in interstate commerce by the means and instruments of transportation such securities for the purpose of sale and for delivery after sale, and (c) making use of the means or instruments of transportation and communication in interstate commerce and of the mails to offer to sell such securities.

31. The sale of common stock was offered and sold to the public through a general solicitation of investors.

32. No registration statements were filed with the Commission or were otherwise in effect with respect to these securities.

33. By reason of the foregoing, Smart-Mart, McMurray and Woy have violated and, unless enjoined, will continue to violate Section 5(a) and (c) of the Securities Act, [15 U.S.C. §§77e(a) and (c)].

SECOND CLAIM

Violations of Section 17(a) of the Securities Act

34. Paragraphs 1 through 28 are hereby realleged and incorporated by reference herein.

35. Smart-Mart, McMurray and Woy, in connection with the offer and sale of securities, by use of the means and instruments of transportation and communication in interstate commerce and by use of the mails, directly and indirectly, have employed schemes and artifices to defraud; made untrue statements of material fact and have 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; and engaged in acts, practices, courses of business which have operated as a fraud and deceit upon purchasers and sellers.

36. As a part of and in furtherance of their scheme to defraud, Smart-Mart, McMurray and Woy, directly and indirectly, prepared, disseminated or used contracts, written offering documents, promotional materials, investor and other correspondence and oral presentations which contained untrue statements of material facts and misrepresentations of material facts and which omitted to state material facts necessary

in order to make the statements made, in light of the circumstances under which they were made, not misleading, including, but not limited to, those set forth above.

37. Smart-Mart, McMurray and Woy made these misrepresentations and omissions knowingly or with reckless disregard for the truth.

38. By reason of the foregoing, Smart-Mart, McMurray and Woy have violated and, unless enjoined, will continue to violate the provisions of Section 17(a) of the Securities Act [15 U.S.C. 77q(a)].

THIRD CLAIM

Violations of Section 10(b) of the Exchange Act and Rule 10b-5

39. Paragraphs 1 through 28 are hereby realleged and incorporated by reference herein.

40. Smart-Mart, McMurray and Woy, in connection with the purchase and sale of securities, by use of the means and instrumentalities of interstate commerce and by use of the means and instrumentalities of interstate commerce and of the mails, directly and indirectly employed devices, schemes and artifices to defraud, (b) have made untrue statements of material facts and have omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and engaged in acts, practices and courses of business which have operated as a fraud and deceit upon purchasers, prospective purchasers and other persons.

41. As a part of and in furtherance of their scheme to defraud, Smart-Mart, McMurray and Woy, directly and indirectly, prepared, disseminated or used contracts, written offering documents, promotional materials, investor and other correspondence

and oral presentations which contained untrue statements of material facts and misrepresentations of material facts and which omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, including, but not limited to, those set forth above.

42. Smart-Mart, McMurray and Woy made these misrepresentations and omissions knowingly or with reckless disregard for the truth.

43. By reason of the foregoing, Smart-Mart, McMurray and Woy have violated and, unless enjoined, will continue to violate the provisions of Section 10(b) of the Exchange Act [15 U.S.C. 78j(b)] and Rule 10b-5 [17 C.F.R. §240.10b-5] thereunder.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court issue Orders:

I.

Permanently enjoining Smart-Mart, McMurray, Woy and their officers, agents, servants, employees, attorneys, and those persons in active concert or participation with them who receive actual notice by personal service or otherwise, from violating, directly or indirectly, Sections 5(a) and 5(c) of the Securities Act [15 U.S.C. §§77e(a) and (c)].

II.

Permanently enjoining Smart-Mart, McMurray, Woy and their officers, agents, servants, employees, attorneys, and those persons in active concert or participation with them who receive actual notice by personal service or otherwise, from violating, directly or indirectly, Section 17 of the Securities Act [15 U.S.C. §78q(a)].

III.

Permanently enjoining Smart-Mart, McMurray, Woy and their officers, agents, servants, employees, attorneys, and those persons in active concert or participation with them who receive actual notice by personal service or otherwise, from violating, directly or indirectly, Section 10(b) of the Exchange Act [15 U.S.C. §78j(b)], and of Rule 10b-5 [17 C.F.R. §240.10b-5] thereunder.

IV.

Requiring the Defendants to disgorge an amount equal to the funds and benefits they obtained illegally as a result of the violations alleged, plus prejudgment interest on that amount.

V.

Requiring the Defendants to file with the Court and serve upon the Commission, an accounting, under oath, detailing all assets, funds or other property received from investors and the disposition of such assets, funds and property.

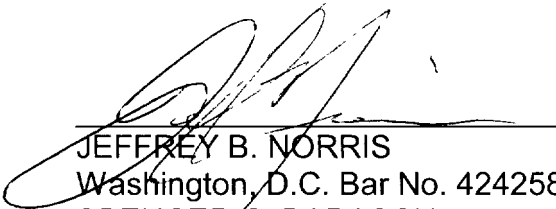
VI.

Requiring Defendants to pay civil penalties pursuant to Section 20(d) of the Securities Act, 15 U.S.C. §77t(d), and Section 21(d) of the Exchange Act, 15 U.S.C. §78u(d), for the violations alleged herein.

VII.

Ordering such other and further relief as the Court may deem just and proper.

Respectfully Submitted,



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Dated this 18th day of February 2001.