

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

FONECASH, INC., and
DANIEL E. CHARBONEAU,

Defendants.

CASE NUMBER 1:02CV00651 - JL

JUDGE: Richard J. Leon

DECK TYPE: ~~Civil Rights (non-employment)~~
GENERAL CIVIL

DATE STAMP: 04/08/2002

COMPLAINT FOR INJUNCTIVE RELIEF

It appears to Plaintiff, Securities and Exchange Commission ("Commission"), and it alleges, that:

OVERVIEW

1. This matter concerns the filing with the Commission of a fraudulent registration statement and amendments, and various periodic reports and the distribution into the marketplace of misleading information by FoneCash, Inc. ("FoneCash") and its President, ^{acting} Chief Executive Officer and Chairman, Daniel E. Charboneau ("Charboneau"). The common stock of FoneCash trades on the OTC Bulletin board.

2. On December 26, 2001, FoneCash filed with the Commission a Form SB-2 registration statement which became effective on January 16, 2002. A preeffective amendment was filed

on January 14, 2002. Three post effective amendments have been filed, the most recent of which was filed on March 25, 2002. That registration statement and amendments, all signed by Charboneau, contain several material misrepresentations and omissions. Among other things, the registration statement and amendments claim that FoneCash manufactures credit card terminals under a specified patent to which FoneCash obtained the exclusive rights in 1997. The registration statement and amendments claim that the patent runs until 2004. In fact, the patent, which dates back to 1989, lapsed in 1993 for nonpayment of fees. The registration statement contains financial statements audited by a certified public accountant who purports to be, but is not, independent. The pending amendments also grossly understate, as the result of intervening sales, the number of outstanding shares.

3. In addition to the misrepresentations in the registration statement, several of which were repeated in various periodic filings by the company, FoneCash also maintains a website which grossly misrepresents the company's business, stating that the company has an active business processing credit card transactions through its servers and receives two thirds of its revenues from that activity. In fact, FoneCash has no such business. Moreover, since March 2001, Charboneau has distributed,

via the internet, several misleading press releases which falsely describe various mergers and acquisitions and make other false statements.

VIOLATIONS

4. By virtue of the foregoing conduct, and other conduct, FoneCash and Charboneau have engaged, and unless enjoined will engage, in fraudulent practices and other conduct which violates Section 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. 77q(a)] and 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] thereunder. FoneCash, aided and abetted by Charboneau, has engaged, and unless enjoined will engage, in conduct which violates Section 13(a) of the Exchange Act [15 U.S.C. 78m(a)] and Rules 12b-20, 13a-1 and 13a-13 [17 C.F.R. 240.12b-20, 240.13a-1 and 240.13a-13] thereunder, and Charboneau has violated, and unless enjoined will violate, Section 16(a) of the Exchange Act [15 U.S.C. p(a)] and Rules 16a-2 and 16a-3 [17 C.F.R. 240.16a-2 and 240,16a-3] thereunder.

JURISDICTION AND VENUE

5. The Commission brings this action pursuant to Sections 20(b) and 20(d) of the Securities Act [15 U.S.C. 77t(b) and 77t(d)], and Sections 21(d) and 21(e) of the Exchange Act [15

U.S.C. 78u(d) and 78u(e)], to enjoin the defendants from engaging in the transactions, acts, practices and courses of business alleged in this complaint, and transactions, acts, practices and courses of business of similar purport and object, for disgorgement of illegally obtained funds and other equitable relief, and for civil money penalties.

6. This Court has jurisdiction over this action pursuant to Sections 20(b), 20(d) and 22(a) of the Securities Act [15 U.S.C. 77t(b), 77t(d) and 77v(a)] and Sections 21(d), 21(e) and 27 of the Exchange Act [15 U.S.C. 78u(d), 78u(e) and 78aa].

7. The defendants, directly and indirectly, made use of the mails, the means and instruments of transportation and communication in interstate commerce, and the means and instrumentalities of interstate commerce in connection with the transactions, acts, practices and courses of business alleged in this complaint.

8. Certain of the transactions, acts, practices and courses of business constituting violations of the Securities Act and the Exchange Act have occurred in the District of Columbia. Specifically, the defendants have filed inaccurate and fraudulent reports and registration statements with the Commission in the District of Columbia.

9. The defendants, unless restrained and enjoined by this Court, will continue to engage in the transactions, acts, practices and courses of business alleged in this complaint, and in transactions, acts, practices and courses of business of similar purport and object.

DEFENDANTS

10. FoneCash, Inc. is a development stage Delaware corporation with its principal place of business in New York, N.Y. FoneCash's common stock is quoted on the OTC Bulletin Board and is currently trading at approximately seven cents per share. FoneCash was incorporated in August 1997. According to its registration statement, FoneCash has never generated any revenue from operations. As of December 31, 2000, FoneCash had 170 shareholders and 19,900,000 shares of stock outstanding. FoneCash recently increased the number of authorized shares to 500 million and issued more than 200 million shares.

11. Daniel E. Charboneau, age 69, is a resident of White Plains, New York. Charboneau is the president, chief executive officer and chairman of the board of FoneCash. Charboneau is one of the founders of FoneCash. As of January 2002, Charboneau owned approximately 20 percent of the outstanding FoneCash stock.

FACTS

12. FoneCash was formed in 1997 and, according to its public filings, engages in the business of manufacturing and selling terminals for credit card transactions. FoneCash includes in its various releases a standard description which states that FoneCash, under an "exclusive licensing agreement," "designs, develops and manufactures" electronic terminals for processing credit and debit cards of all the major bank issuers whose cards are accepted for payment by merchants worldwide. The description goes on to state that the company's products include "software and proprietary processing services that provide end-to-end support of electronic financial transactions..."

13. FoneCash does not have manufacturing facilities, but claims to have reached an agreement with a Taiwanese manufacturing concern to produce the product at the appropriate time.

14. On December 26, 2001, FoneCash filed with the Commission a registration statement on Form SB-2 with respect to the sale of 7,275,730 shares of FoneCash common stock by various shareholders, not including Charboneau. However, the Form SB-2 specifically listed only 4,775,730 shares which were identified

with specific shareholders. Charboneau signed the registration statement.

15. FoneCash filed a preeffective amendment on January 14, 2002. The registration statement became effective on January 16, 2002. The preeffective amendment was signed by Charboneau.

16. On March 6, 2002, FoneCash filed a post effective amendment that substituted one selling shareholder for another. The post effective amendment listed 5,350,730 shares which were identified with specific selling shareholders. Charboneau signed the post effective amendment.

17. On March 14, 2002, FoneCash filed a second post effective amendment which added several selling shareholders and increased the shares to be sold by specified sellers to 7,275,730. Charboneau signed that post effective amendment.

18. A third post effective amendment was filed on March 25, 2002. That amendment includes a list of recent stock sales by the company. Charboneau signed that post effective amendment.

19. None of the post effective amendments has gone effective.

20. Based upon information and belief, some of the selling shareholders appear to have sold shares under the registration statement.

Misrepresentations And Omissions

21. The registration statement and all of the amendments represent that on November 1, 1997, FoneCash entered into a license agreement through which it acquired "exclusive, worldwide rights" to a specified patent numbered 4,803,719 ("the patent"), which provides a method for powering its devices directly from telephone lines. The registration statement and amendments claim that the patent runs until 2004.

22. In fact, the patent, which dates back to 1989, lapsed in 1993 for nonpayment of fees. Charboneau has been aware that the patent had lapsed since 1997. Despite his knowledge, the above described representation regarding the patent was also included in FoneCash's Form 10-KSB (annual report) for the year ending December 31, 2000, its Forms 10-QSB (quarterly reports) for the June 30, 2000, September 30, 2000, March 31, 2001, June 30, 2001 and September 30, 2001 quarters, Form 8 registration statements filed on March 15, 2001 and June 26, 2001 (by reference to the Form 10-KSB), and the Form 10-SB registering the company's securities which was filed on December 30, 1999, all of which were signed by Charboneau.

23. In addition to the registration statement and the amendments thereto, at least ten FoneCash releases during 2001

and 2002, all of which were written by Charboneau and published on the Internet, contain a standard paragraph describing the company as manufacturing electronic credit card terminals under an "exclusive" agreement. As noted above, the exclusive rights are to a lapsed patent. That fact is not disclosed in any of the releases.

24. The registration statement, the amendments, the company's Form 10-KSB (annual report) for the year ending December 31, 2000, and the Form-SB filed on December 31, 1999 to register the company's securities, all include financial statements audited by Stewart H. Benjamin, CPA, purporting to be an independent auditor.

25. In fact, Benjamin maintains the books of FoneCash and prepares its financial statements. Accordingly, he is not independent. The financial statements audited by the purportedly independent Benjamin were also included in the Form 10K-SB filed by FoneCash for the year ended December 31, 2000 and the Form 10-SB filed by FoneCash to register its securities on December 31, 1999, both of which were signed by Charboneau despite the fact that he knew that Benjamin was not independent.

26. FoneCash's registration statement lists Michael Wong as its Chief Financial Officer. In fact, although Wong has been

given that title, Wong plays no role in maintaining the books or producing the financial statements of FoneCash and no role whatsoever with regard to FoneCash in the United States. Benjamin essentially fills that role.

27. The registration statement also has attached a contract with Penny King Holdings Corp. ("Penny King"). Pursuant to the contract, which was executed in December 2001, Penny King was to advance \$250,000 to FoneCash, in exchange for several million shares of FoneCash stock.

28. The Penny King contract was cancelled in on January 29, 2002, after FoneCash refused to advance or place in escrow the shares. The post-effective amendments do not contain the contract.

29. The pending post effective amendments grossly understate the number of authorized and outstanding shares. The original registration statement and all post effective amendments state that the authorized capital stock of FoneCash is 20,000,000 shares and list the outstanding shares at 19,900,000. In fact, FoneCash recently changed its authorized stock to 510 million shares. However, the subsequent amendments continue to state that as of the filing date, the lower number of shares (20 million) is the number authorized.

30. FoneCash has entered into an agreement with a Greek firm, Hedley Finance, Inc. pursuant to which Hedley Finance will purchase 200 million shares at three cents per share. That agreement is not disclosed in any of the amendments.

31. Transfer agent records, as of March 12, 2002, list 218,174,056 shares outstanding, and reveal the issuance of the 200 million shares to Hedley Finance on January 29, 2002. This enormous increase in outstanding shares is not disclosed in any of the pending amendments or otherwise.

32. FoneCash maintains a website at www.Fonecash.com. The website misrepresents that FoneCash has an active business processing credit card transactions. The website states,

"In addition to providing hardware for transactions, the Company also processes credit and debit card transactions for these merchants, such as limo drivers, shipping companies, as well as in-home salespeople such as Avon, Amway, Mary Kay and variety [sic] of others. There are an estimated 32 million mobile merchants in the United States. The payment information from the wireless terminal is transmitted to the Companies [sic] servers where is [sic] processed and sent to various banks for settlement... Two-thirds of the Companies [sic] revenues are derived from processing fees."

33. In fact, although FoneCash purportedly intends to process the data from the terminals at some future date, as yet, FoneCash has no computer servers for this purpose and no physical

site to locate such servers. FoneCash is not servicing any customers and does not have any revenues from such business.

34. The text of the website was written by Charboneau, or from information provided by Charboneau.

35. On March 29, 2001, FoneCash published on the Internet a release claiming that FoneCash had completed the acquisition of four companies in China (the "Hong Kong companies"). The release, written by Charboneau, states,

The four acquired companies are Universal Information Technology, (Hong Kong) Limited, a company which has developed a video compression technology for internet and wireless applications, Firstech Ventures (Hong Kong) Limited, a company that locates engineering services for environmental projects in China, especially land fill projects, waste water and waste oil treatment facilities, and waste liner project[sic]; Tech Unity Technology, (Hong Kong) Limited, which engages in gathering information and research about business opportunities in China for dissemination among U.S. and Australian bidders; and FoneCash.com (Hong Kong) Limited, a company for the wireless processing of credit and debit cards for mobile merchants.

36. A virtually identical disclosure was included as a subsequent event in the company's Form 10-KSB for the year ending December 31, 2000, which was signed by Charboneau and filed with the Commission.

37. In fact, at the time of the release, Charboneau was aware that the Hong Kong companies were shells, with no business,

employees or assets, except that Universal Information Technology may have possessed some technology relating to video compression.

38. On March 23, 2001, a release was issued claiming that the recently acquired Hong Kong companies would be listed on the Heng Sang, Hong Kong's stock exchange and that Charboneau hoped to attract \$4-5 million in new investment in the companies. The companies have never been listed on the Heng Sang.

39. FoneCash did not disclose that the acquired Hong Kong companies were only shells until the disclosure was made in the notes to its financial statements as of September 30, 2001, filed with a Form 10-QSB in November 2001.

40. On October 24, 2001, FoneCash, through Charboneau, published on the Internet a release claiming that FoneCash had entered into an agreement to acquire a majority interest in World Wide Money Order Corp. ("World Wide"), a company which finances gas purchases by independent service stations.

41. According to the October 24, 2001 release, FoneCash would own 80 percent of the stock of World Wide and would provide the terminals to process World Wide's transactions.

42. Although a letter of intent was signed, the merger between FoneCash and Worldwide was never consummated and no merger agreement was ever executed.

43. Although the letter of intent signed by World Wide and FoneCash stated that the proposed agreement had to be finalized by October 25, 2001 and no agreement was executed by that date, essentially terminating the proposal, Charboneau nevertheless appeared on a television interview on November 18, 2001 and again described the merger as going forward.

44. FoneCash has listed an investor relations firm, Spring & Associates, as the contact on several of its releases. FoneCash never paid the firm the required retainer and has never been authorized to use its name and, in fact, FoneCash has been instructed not to use the firm's name.

45. On May 10, 2001, FoneCash published on the Internet a release written by Charboneau announcing that it was "in discussions with ITE (Holding) Limited ("ITE") in Hong Kong to form a joint venture, utilizing a wholly owned subsidiary of FoneCash, Universal Information Technology Limited, in the formation of a merger company which will eventually be qualified to have its stock trading on the GEM Board in Hong Kong."

46. The release goes on to quote Charboneau as stating that the merger offers an unprecedented opportunity for FoneCash, and that the position of ITE in Hong Kong would "undoubtedly lead

other investors to take a serious look at the merger company and lead to value for the investors of both parent companies.”

47. In fact, no merger agreement was ever executed between FoneCash and ITE. FoneCash never issued a release disclosing that the merger was off.

48. Charboneau has sold an undetermined amount of FoneCash stock during the course of the scheme described in this complaint, but at least 35,000 shares in or about March 2001.

49. Charboneau has not filed with the Commission an Exchange Act Form 4 reporting any sales of FoneCash stock.

50. FoneCash has sold at least 7,275,730 shares in 18 transactions between November 1, 2001 and March 13, 2002, in exchange for various services. FoneCash previously sold an undetermined number of shares during the course of the scheme.

51. During 2002, FoneCash has sold 200 million shares to Hedley Finance, Inc., for \$6 million.

COUNT I

FRAUD

Violations of Section 17(a)(1) of the Securities Act
[15 U.S.C. 77q(a)(1)]

52. Paragraphs 1 through 51 are hereby realleged and are incorporated herein by reference.

53. From in or about December 1999 through the present, defendants FoneCash and Charboneau, singly and in concert, in the offer and sale of securities, by the use of means and instruments of transportation and communication in interstate commerce and by use of the mails, directly and indirectly, employed devices, schemes and artifices to defraud purchasers of such securities, all as more particularly described above.

54. The defendants knowingly, intentionally, and/or recklessly engaged in the aforementioned devices, schemes and artifices to defraud.

55. By reason of the foregoing, defendants FoneCash and Charboneau have violated, and, unless restrained and enjoined, will continue to violate Section 17(a)(1) of the Securities Act [15 U.S.C. 77q(a)(1)].

COUNT II

FRAUD

Violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act [15 U.S.C. 77q(a)(2) and 77q(a)(3)]

56. Paragraphs 1 through 51 are hereby realleged and are incorporated herein by reference.

57. From in or about December 1999 through the present, defendants FoneCash and Charboneau, in the offer and sale of

securities, by use of means and instruments of transportation and communication in interstate commerce and by use of the mails, directly and indirectly:

- (a) obtained money and property by means of untrue statements of material facts and omissions 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
- (b) engaged in transactions, practices and courses of business which operated and would operate as a fraud and deceit upon the purchasers of such securities,

all as more particularly described above.

58. By reason of the foregoing, defendants FoneCash and Charboneau have violated, and, unless restrained and enjoined, will continue to violate Sections 17(a)(2) and (3) of the Securities Act [15 U.S.C. 77q(a)(2) and (3)].

COUNT III

FRAUD

Violations of Section 10(b) of the Exchange Act
[15 U.S.C. 78j(b)] and Rule 10b-5 Thereunder
[17 C.F.R. 240.10b-5]

59. Paragraphs 1 through 51 are hereby realleged and are incorporated herein by reference.

60. From in or about December 1999 through the present, defendants FoneCash and Charboneau, in connection with the purchase and sale of securities, by the use of means and instrumentalities of interstate commerce and by use of the mails, directly and indirectly:

- (a) employed devices, schemes, and artifices to defraud;
 - (b) made untrue statements of material facts and 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
 - (c) engaged in acts, practices, and courses of business which operated as a fraud and deceit upon persons,
- all as more particularly described above.

61. Said defendants knowingly, intentionally and/or recklessly engaged in the above-described conduct.

62. By reason of the foregoing, defendants FoneCash and Charboneau have violated, and, unless restrained and enjoined will continue to violate Section 10(b) of the Exchange Act [15 U.S.C. 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. 240.10b-5].

COUNT IV

ANNUAL REPORTS FILED WITH THE COMMISSION

Violations of Section 13(a) of the Exchange Act
[15 U.S.C. 78m(a)] and Rules 12b-20 and 13a-1 thereunder
[17 C.F.R. 240.12b-20 and 240.13a-1]

63. Paragraphs 1 through 51 are hereby realleged and are incorporated herein by reference.

64. On or about March 30, 2001, Defendants FoneCash and Charboneau, singly or in concert, prepared and filed, and Charboneau signed, FoneCash's Form 10-K for the year ending December 31, 2000, which was materially false and misleading, as described above.

65. By reason of the foregoing, FoneCash, aided and abetted by Charboneau, violated, and unless enjoined will continue to violate, and Charboneau will continue to aid and abet violations

of, Section 13(a) of the Exchange Act [15 U.S.C. 78m(a)] and Rules 12b-20 and 13a-1 thereunder [17 C.F.R. 240.12b-20 and 240.13a-1].

COUNT V

QUARTERLY REPORTS FILED WITH THE COMMISSION

Violations of Section 13(a) of the Exchange Act
[15 U.S.C. 78m(a)] and Rules 12b-20 and 13a-13 [17 C.F.R.
240.12b-20 and 240.13a-13]

66. Paragraphs 1 through 51 are hereby realleged and are incorporated herein by reference.

67. Defendants FoneCash and Charboneau, singly or in concert, prepared and filed, and Charboneau signed, FoneCash's Forms 10-QSB for the June 30, 2000, September 30, 2000, March 31, 2001, June 30, 2001 and September 30, 2001 quarters, each of which were materially false and misleading, as described above.

68. By reason of the foregoing, FoneCash, aided and abetted by Charboneau, violated Section 13(a) of the Exchange Act [15 U.S.C. 78m(a)] and Rules 12b-20 and 13a-13 thereunder [17 C.F.R. 240.12b-20 and 240.13a-13].

COUNT VI

FAILURE TO FILE REPORTS

Violations of Section 16(a) of the Exchange Act [15 U.S.C.p(a)]
and Rules 16a-2 and 16a-3 [17 C.F.R. 240.16a-2 and 16a-3]

69. Paragraphs 1 through 51 are hereby realleged and are incorporated herein by reference.

70. During 2001, defendant Charboneau, while serving as the president, chief executive officer and chairman of FoneCash, and while owning approximately 20 percent of FoneCash's outstanding common stock, sold shares of his FoneCash common stock and failed to file a Form 4 with the Commission reporting such sales, as required by Section 16(a) of the Exchange Act and the rules thereunder.

71. By reason of the foregoing, Charboneau violated Section 16(a) of the Exchange Act [15 U.S.C. 78p(a)] and Rules 16a-2 and 16a-3 thereunder [17 C.F.R. 240.16a-2 and 240.16a-3].

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Commission, respectfully prays that the Court:

I.

Make findings of fact and conclusions of law in accordance with Rule 52 of the Federal Rules of Civil Procedure, finding that the defendants committed the violations alleged herein.

II.

Issue preliminary and permanent injunctions enjoining defendants FoneCash and Charboneau, and their agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise, and each of them, from violating Section 17(a) of the Securities Act [15 U.S.C. 77q(a)], and Sections 10(b) and 13(a) of the Exchange Act [15 U.S.C. 78j(b) and 78m(a)] and Rules 10b-5, 12b-20, 13a-1 and 13a-13 thereunder [17 C.F.R. 240.10b-5, 240.12b-20, 240.13a-1 and 240.13a-13] and enjoining Charboneau from violating Section 16(a) of the Exchange Act [15 U.S.C. 78p(a)] and Rules 16a-2 and 16a-3 thereunder [17 C.F.R. 240.16a-2 and 240.16a-3].

III.

Issue an order requiring accountings by defendants of the use of proceeds of the sales of the securities described in this Complaint and the disgorgement of all ill-gotten gains with

prejudgment interest, to effect the remedial purposes of the federal securities laws.

IV.

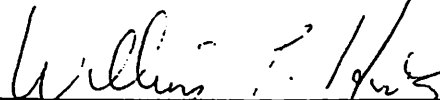
Issue an order pursuant to Section 20(d) of the Securities Act [15 U.S.C. 77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. 78u(d)(3)] imposing civil penalties against defendants.

V.

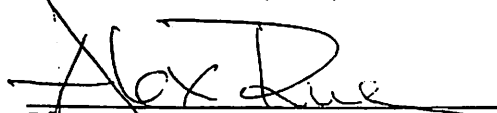
Order other and further relief as this Court may deem just, equitable, and appropriate in connection with the enforcement of the federal securities laws and for the protection of investors.

DATED: 4/8, 2002

RESPECTFULLY SUBMITTED,



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