

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

**VIATICAL CAPITAL, INC.,
d/b/a LIFE SETTLEMENT NETWORK,
LIFE INVESTMENT FUNDING ENTERPRISES, INC.,
CHARLES DOUGLAS YORK, AND
ROBERT KINGSTON COYNE,**

Defendants.

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FILED IN
TAMPA, FLORIDA
CASE NO.

8:03-CV-1895-T-
23 TGW

COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF

Plaintiff, Securities and Exchange Commission (the "SEC" or "Commission"),
alleges and states as follows:

INTRODUCTION

1. The Commission brings this action to enjoin and restrain Defendants from continuing to violate the federal securities laws in connection with the fraudulent offer and sale of securities in the form of membership interests in limited liability companies ("LLCs"). From 1996 to at least December 2002, Defendant Viatical Capital, Inc. d/b/a Life Settlement Network ("VCI"), and its principals Charles York ("York") and Robert Coyne ("Coyne"), raised approximately \$61 million from nearly 1,900 investors nationwide by offering membership interests in LLCs that purchase, sell, and trade discounted life insurance policies, known as viatical settlements.

2. In connection with the sale of these interests, VCI, York and/or Coyne, who are already banned in six states from the unregistered offer and sale of securities, misrepresented material facts concerning their disciplinary history, the investments' risk factors, and rates of return. VCI is currently dissipating investor assets by coordinating the sale of millions of dollars worth of policies without requisite LLC approval. In addition, it appears that VCI has escrowed insufficient reserves to make future premium payments on the insurance policies, thereby raising the risks that policies will lapse for non-payment.

3. Moreover, VCI, York and Coyne continue to defraud investors through their creation of Defendant Life Investment Funding Enterprises, Inc. ("Life Investment"). York and Coyne formed Life Investment to acquire the assets of the LLCs in order to conduct an initial public offering which they promised investors would lead to up to 300% returns on their initial investment. Defendants continue to make misrepresentations concerning the Life Investment public offering to lull investors into keeping their monies in the LLCs. Further, Defendants have outright refused investors' requests to return investment principal.

4. The SEC has grave concerns that without immediate action by the Court, additional investors will be defrauded, current investors will be lulled into further investment, and that upon notice of this action, monies raised by Defendants will be dissipated or diverted. In addition, unless restrained, Life Investment will become a public company adding new investors to the fraud. As a result, the SEC also brings this action to seek a temporary order freezing the assets of Defendants and appointing a receiver over VCI and Life Investment. Such immediate relief is necessary to prevent VCI, Life Investment,

York and Coyne from dissipating investors' funds and prevent Life Investment from becoming a public company that could attract additional investors.

DEFENDANTS

5. VCI is a Florida corporation organized in January 1996, with its principal offices located at 1605 Main Street, Suite 1109, Sarasota, Florida, 34236. From 1996 to at least December 2002, VCI has sold interests in various LLCs that collectively invest in viatical settlement policies. No registration statement has been filed or is in effect with the Commission in connection with any of the investments being offered and sold by VCI.

6. Life Investment is a Nevada corporation organized in February 2002, with its principal offices located at 6075 South Eastern Avenue, Suite 1, Las Vegas, Nevada, 89119-3146. In the summer of 2002, Life Investment entered into agreements with the LLCs to purchase their assets in exchange for shares of Life Investment. Life Investment has filed two registration statements with the SEC in an effort to become a publicly traded company.

7. York, age 41, resides in Sarasota, Florida. York was the president of VCI at all relevant times and he is a licensed insurance agent. York assisted in the formation of Life Investment and served as its initial-interim director and officer. York is not registered with the Commission in any capacity.

8. Coyne, age 59, resides in Sarasota, Florida. Coyne was the vice-president of VCI at all relevant times. Coyne assisted in the formation of Life Investment and

served as its initial-interim director and officer. Coyne is not registered with the Commission in any capacity.

JURISDICTION AND VENUE

9. This Court has jurisdiction over this action pursuant to Sections 20(b), 20(d) and 22(a) of the Securities Act of 1933 ("Securities Act"), 15 U.S.C. §§ 77t(b), 77t(d), and 77v(a), and Sections 21(d), 21(e), and 27 of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. §§ 78u(d), 78u(e) and 78aa.

10. Venue is appropriate in the Middle District of Florida. Certain of the acts, procedures and transactions constituting violations of the Securities Act and the Exchange Act have occurred within the Middle District of Florida. The offices of VCI and Life Investment are located within the Middle District of Florida, and Defendants Coyne and York reside within in Middle District.

11. Defendants, directly and indirectly, have made use of the means and instrumentalities of interstate commerce, the means and instruments of transportation and communication in interstate commerce, and the mails, in connection with the acts, practices, and courses of business set forth in this Complaint.

FACTUAL BACKGROUND

A. VCI's Offering

12. From 1996 to at least December 2002, VCI offered and sold membership interests in LLCs that invested in viatical settlements. A viatical settlement is a life insurance policy of a terminally ill person (the viator) that is sold at a price less than the face value of the policy. Investors pay the premiums, and realize a profit if the policy matures

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within an expected amount of time. Thus, each party to the settlement transaction receives a benefit. The insured, or viator, receives a portion of the proceeds of his life insurance policy as a lump sum. The investor receives the face value of the life insurance policy when the viator dies.

13. VCI recruited a nationwide network of independent insurance agents to solicit investors. VCI created and distributed sales literature to the agents, who used newspaper advertisements to tout the investment. The advertisements promised investors double-digit returns and 100% safety of principal. VCI's marketing campaign targeted elderly, unsophisticated investors.

14. As a means to invest in these viatical settlements, VCI offered investors membership interests in various LLCs created by VCI. The membership interests were sold in \$5,000 increments, and the maximum capitalization for each LLC was \$1 million. Generally, 35 individual investors funded each LLC. VCI formed at least 61 LLCs and raised approximately \$61 million.

15. VCI offered investors five different "fund" types, ranging from an income-oriented fund marketed as a conservative investment, to a higher risk fund, which purportedly purchased deeply discounted insurance policies. Each LLC's portfolio was formed with one of the five different investment objectives. An LLC matured in either 2 or 4 years, and promised annual yields ranging from 12 to 20% or greater.

B. York and Coyne Controlled VCI

16. York and Coyne created and controlled VCI. York and Coyne created VCI in 1996. At all relevant times, York has served as VCI's president and Coyne as its

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vice-president, secretary and treasurer. At all relevant times, both York and Coyne served as VCI's sole directors.

17. According to the VCI operating agreements, the LLCs were to be "managed by its members." In practice, however, York and Coyne exercised virtually total control over each aspect of the management of the LLCs. It was VCI that evaluated and purchased, on behalf of the LLCs, the life insurance policies from terminally ill policyholders through viatical settlement providers. VCI also managed the accounts, books and records of each of the LLCs, issued the quarterly statements and other correspondence to investors, and proposed and drafted proxy materials.

18. In addition, VCI provided the LLC members with little information regarding the policies, failed to provide the insureds' medical information, and regularly denied investors access to books and records. As most investors had no background or expertise with viatical settlements and were otherwise denied information regarding the policies, investors were incapable of running the LLCs as they had no basis to evaluate and analyze the underlying investments.

C. Defendants Made Material Misrepresentations and Omissions

19. VCI, under the control of York and Coyne, provided prospective investors with various offering materials, including advertisements, brochures, promotional videos, sample quarterly statements and operating agreements. These offering materials and documents contain numerous misrepresentations and omissions of material fact.

(i) *Bogus Viatical Settlements*

20. VCI prepared and disseminated quarterly statements to investors that listed the LLCs' purported portfolio of viatical settlements. The statements identified the underlying policies, listed the purchase price, provided historical information on the sale or maturity of the policies, stated a current valuation of the portfolio, and included an expected rate of return. Many of these quarterly statements were false and misleading and included bogus policies that had been rescinded, cancelled, terminated or had lapsed. It was not unusual for quarterly statements to falsely reflect that policies had been sold for a profit, when in reality policies had been cancelled or rescinded prior to the purported sale date or had never been issued at all.

(ii) *VCI's Use of an Unlicensed Viatical Settlement Provider*

21. In its offering materials provided to investors and prospective investors, VCI represented that it would use licensed viatical settlement providers to identify and obtain the "best" viatical settlements on behalf of the LLCs. Contrary to its assertions and to Florida law, VCI obtained at least 98 viatical settlements from Justus Viatical Group, LLC ("Justus"), an unlicensed viatical settlement provider.

22. Indeed, VCI was Justus' primary client from October 1997 to January 1999. In January 1999, the State of Florida ordered Justus to cease-and-desist from viaticating insurance policies, and criminally prosecuted its principal and key employee. Justus was ordered to desist because it put consumers and insurers at risk through the fraudulent and criminal practice of "cleansheeting" – that is, fraudulently obtaining insurance policies by failing to disclose a pre-existing medical condition on an insurance

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application. A cleansheeted policy is of little value because it carries the risk of rescission by the issuer due to being fraudulently obtained. At least 77 of the policies that VCI obtained from Justus were cleansheeted, with an aggregate death benefit of nearly \$6 million.

23. VCI, York and Coyne knew or recklessly disregarded that the Justus policies were fraudulently obtained and purchased them for the LLCs. VCI, York and Coyne also knew or recklessly disregarded that the majority of the Justus policies were cleansheeted.

(iii) VCI Misrepresented its Performance and Risk

24. VCI's sales brochure touts that it is "a proven investment opportunity that offers potential returns of 20% or more per year." VCI salesmen routinely told investors that they would receive as much as a 20%-33% return on their investment. VCI had no basis for claiming these anticipated returns. In actuality, VCI's investments failed to yield their touted returns.

25. The unrealistic forecasts should have been well known to Defendants. Although viatical policies are routinely purchased as investments there is no organized secondary market for their purchase or sale. However, VCI routinely recommended that the LLCs sell specific policies in their portfolio, and in at least one case, VCI failed to disclose that the purchaser of the policies was another LLC managed by VCI. By engaging in these transactions VCI created the false appearance of profits by simply selling a so-called "appreciated" policy from one LLC portfolio to another LLC. This

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shell game among the LLCs was the primary source of the “profits” reported to investors in their quarterly statements.

26. In addition, VCI misrepresented the risk factors associated with an investment in the LLCs. VCI’s offering materials provided to prospective investors and investors describe viatical settlements as a “fully secured”, “stable” investment with no market risk. According to the offering materials, VCI is a “proven investment opportunity” promising “100% safety of principal.”

27. Contrary to these representations, the VCI investments were fraught with risk. Many of the policies were purchased from an unlicensed provider and bore the hallmarks of having been fraudulently obtained. If detected by the insurer, these policies could have been and were rescinded. Moreover, it was deceptive to promise “100% safety of principal”, because if a viator outlived his life expectancy, then the LLC would have to continue to pay premiums on the policy, and if he lived long enough, the premium payments could affect the principal.

28. The offering materials further state that VCI was entitled to 20% of the investment proceeds as administrative fees. VCI’s fees frequently exceeded the 20% estimate referenced in its offering materials and reached as high as 36%, while averaging 25%.

(iv) VCI, York and Coyne Misused Investor Proceeds

29. In addition, VCI, York and Coyne also misused investor proceeds. VCI’s offering materials state that investor monies will be used to acquire viatical settlements. However, instead of solely purchasing viatical settlements, York and Coyne borrowed

\$250,000 from two LLCs to fund their own boat-leasing venture. This loan was effected without investor authorization or knowledge. In addition, VCI, York and Coyne authorized the purchase of a worthless re-insurance policy on behalf of the LLCs while receiving a substantial commission, and used investor funds without authorization to pay attorneys' fees for an unknown purpose.

(v) *VCI, York and Coyne Failed to Disclose Their Disciplinary History*

30. VCI also failed to disclose prior disciplinary histories that involved VCI, York, Coyne and others. From 1998 through 2002, six state regulatory authorities issued cease-and-desist orders against VCI, York, Coyne, VCI-related entities and/or LLCs for the unregistered offer and sale of VCI's securities. The offering materials tout the backgrounds of York and Coyne without mentioning these orders.

(vi) *Life Investment's Lulling and Material Misrepresentations and Omissions*

31. In the summer of 2001, VCI informed investors that it was planning to conduct a reverse merger of the LLCs into an existing publicly traded company. VCI's salesmen provided written and oral representations to investors that they could expect returns of 300% to 400% on their initial investment. Based upon these misrepresentations, VCI lulled many investors to extend the dissolution of their LLCs. VCI retained a financial advisory firm to offer financial consulting to the LLCs, but the merger was never completed.

32. VCI renewed its efforts to conduct a public offering in February 2002. York and Coyne helped form Life Investment, with both serving as directors and officers.

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According to offering materials provided to investors, Life Investment would acquire the assets of each LLC, and conduct an initial public offering.

33. Since the maturity date of many of the LLCs was either approaching or had already passed, and investors had unsuccessfully demanded that VCI return their principal, VCI advised investors to delay the dissolution of their LLCs, and vote to ratify the proposed offering. VCI's salesmen told investors that they could expect a 100% to 300% return on their investment once the stock began to trade publicly.

34. In December 2002, to facilitate its public offering, Life Investment sent investors offering materials including an information statement estimating the asset value of each LLC, an asset purchase agreement and other documents to effect the transfer of the LLCs to Life Investment. Many of the estimated asset values were misleading and represented higher values than the actual values of the LLCs. Several months later, Life Investment informed the LLC investors that 59 of the 60 LLCs approved the asset purchase agreement.

35. In February 2003, Life Investment filed a Form SB-2 registration statement with the Commission, which it later withdrew and replaced with a Form S-4. VCI encouraged the LLC investors to review Life Investment's filings on the Commission's website. Life Investment's Form S-4 registration statement also contained a false misrepresentation, including a grossly inaccurate financial statement for an LLC that overstates its value.

36. In addition, Life Investment failed to disclose that VCI, York, and Coyne were the subject of cease-and-desist orders in six different states in connection with their

sales of the LLCs. Life Investment also failed to disclose that VCI, York and Coyne had purchased millions of dollars worth of fraudulently obtained life insurance policies. Life Investment recently withdrew its filing, but has told the SEC's Division of Corporation Finance that it plans another filing in the near future, further placing investor assets at risk.

COUNT I (VCI, York and Coyne)

**SALE OF UNREGISTERED SECURITIES IN VIOLATION OF
SECTIONS 5(a) AND 5(c) OF THE SECURITIES ACT**

37. The Commission repeats and realleges paragraphs 1 through 36 of this Complaint.

38. No registration statement was filed or in effect with the Commission pursuant to the Securities Act and no exemption from registration exists with respect to the securities and transactions described in this Complaint.

39. Since a date unknown but since at least January 1996 through the December 2002, VCI, York and Coyne, directly and indirectly, have been: (a) making use of the means or instruments of transportation or communication in interstate commerce or of the mails to sell securities as described herein, through the use or medium of a prospectus or otherwise; (b) carrying securities or causing such securities, as described in this Complaint, to be carried through the mails or in interstate commerce, by any means or instruments of transportation, for the purpose of sale or delivery after sale; and/or (c) making use of the means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell or offer to buy through the use or medium of any prospectus or otherwise, as described in this Complaint, without a

registration statement having been filed or being in effect with the Commission as to such securities.

40. By reason of the foregoing, the Defendants, directly and indirectly, have violated, and unless enjoined, will continue to violate Sections 5(a) and 5(c) of the Securities Act, 15 U.S.C. §§ 77e(a) and 77e(c).

COUNT II (All Defendants)

**FRAUD IN VIOLATION OF
SECTION 17(a)(1) OF THE SECURITIES ACT**

41. The Commission repeats and realleges paragraphs 1 through 36 of its Complaint.

42. Since a date unknown but since at least January 1996 through December 2002, VCI, York and Coyne, directly and indirectly, by use of the means or instruments of transportation or communication in interstate commerce and by use of the mails, in the offer or sale of securities, as described in this Complaint, have been, knowingly, willfully or recklessly employing devices, schemes or artifices to defraud.

43. Since a date unknown but since at least February 2002 through the present, Life Investment, directly and indirectly, by use of the means or instruments of transportation or communication in interstate commerce and by use of the mails, in the offer or sale of securities, as described in this Complaint, have been, knowingly, willfully or recklessly employing devices, schemes or artifices to defraud.

44. By reason of the foregoing, the Defendants, directly and indirectly, have violated and, unless enjoined, will continue to violate Section 17(a)(1) of the Securities Act, 15 U.S.C. § 77q(a)(1)

COUNT III (All Defendants)

**FRAUD IN VIOLATION OF SECTION 10(b)
OF THE EXCHANGE ACT AND RULE 10b-5 PROMULGATED THEREUNDER**

45. The Commission repeats and realleges paragraphs 1 through 36 of its Complaint.

46. Since a date unknown but since at least January 1996 through the present, VCI, York and Coyne, directly and indirectly, by use of the means and instrumentality of interstate commerce, and of the mails in connection with the purchase or sale of the securities, as described in this Complaint, have been, knowingly, willfully or recklessly: (a) employing devices, schemes or artifices to defraud; (b) making untrue statements of material facts and omitting 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/or (c) engaging in acts, practices and courses of business which have operated, are now operating and will operate as a fraud upon the purchasers of such securities.

47. Since a date unknown but since at least February 2002 through the present, Life Investment, directly and indirectly, by use of the means and instrumentality of interstate commerce, and of the mails in connection with the purchase or sale of the securities, as described in this Complaint, have been, knowingly, willfully or recklessly: (a) employing devices, schemes or artifices to defraud; (b) making untrue statements of material facts and omitting 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/or (c) engaging in acts, practices and courses of business which have

operated, are now operating and will operate as a fraud upon the purchasers of such securities.

48. By reason of the foregoing, Defendants VCI, Life Investment, York and Coyne, directly or indirectly, have violated and, unless enjoined, will continue to violate 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.

COUNT IV (All Defendants)

**FRAUD IN VIOLATION OF
SECTIONS 17(a)(2) AND 17(a)(3) OF THE SECURITIES ACT**

49. The Commission repeats and realleges paragraphs 1 through 36 of this Complaint.

50. Since a date unknown but since at least January 1996, Defendants VCI, York and Coyne, directly and indirectly, by use of the means or instruments of transportation or communication in interstate commerce and by the use of the mails, in the offer or sale of securities, as described in this Complaint, have been: (a) obtaining money or property by means of untrue statements of material facts and omissions of material facts necessary to make statements made, in the light of the circumstances under which they were made, not misleading; and/or (b) engaging in transactions, practices or courses of business which are now operating and will operate as a fraud or deceit upon purchasers and prospective purchasers of such securities.

51. Since a date unknown but since at least February 2002, Life Investment, directly and indirectly, by use of the means or instruments of transportation or communication in interstate commerce and by the use of the mails, in the offer or sale of

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securities, as described in this Complaint, has been: (a) obtaining money or property by means of untrue statements of material facts and omissions to state material facts necessary to make the statements made, in the light of the circumstances under which they were made, not misleading; and/or (b) engaging in transactions, practices and courses of business which are now operating and will operate as a fraud or deceit upon purchasers and prospective purchasers of such securities.

52. By reason of the foregoing, Defendants, directly and indirectly, have violated and, unless enjoined, will continue to violate Sections 17(a)(2) and 17(a)(3) of the Securities Act, [15 U.S.C. §§ 77(q)(a)(2) and 77(q)(a)(3)].

COUNT V (York and Coyne)

**SECTION 20(A)-CONTROL PERSONS-LIABILITY FOR VCI's VIOLATIONS
OF SECTIONS 10(B) OF THE EXCHANGE ACT AND RULE 10(B)-5
THEREUNDER**

53. The Commission repeats and realleges paragraphs 1 through 36 of its Complaint.

54. Defendants York and Coyne were, directly or indirectly, control persons of Defendant VCI for purposes of Section 20(a) of the Exchange Act, 15 U.S.C. §78t(a).

55. Defendant VCI has violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

56. As control persons of VCI, Defendants York and Coyne are jointly and severally liable with and to the same extent as VCI for its violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

RELIEF REQUESTED

WHEREFORE, the Commission respectfully requests that the Court:

I. Declaratory Relief

Declare, determine and find that the Defendants committed the violations of the federal securities laws alleged in this Complaint.

II. Temporary Restraining Order, Preliminary and Permanent Injunctive Relief

Issue a Temporary Restraining Order, a Preliminary Injunction and a Permanent Injunction, restraining and enjoining the Defendants, their officers, agents, servants, employees, attorneys, and all persons in active concert or participation with them, and each of them, from violating: (a) Sections 5(a) and 5(c) of the Securities Act, 15 U.S.C. §§ 77e(a) and 77e(c); (b) Section 17(a)(1) of the Securities Act, 15 U.S.C. § 77q(a); and (c) 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.

III. Disgorgement

Issue an Order requiring the Defendants to disgorge all ill-gotten profits or proceeds that they have received as a result of the acts and/or courses of conduct complained of herein, with prejudgment interest.

IV. Penalties

Issue an Order directing the Defendants to pay civil money 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. § 78(d)(3).

V. Asset Freeze and Accounting

Issue an Order temporarily freezing the assets of the Defendants until further Order of the Court, and requiring accountings by the Defendants.

VI. Appointment of Receiver

Issue an Order appointing a Receiver of the assets of VCI and Life Investment to marshal and safeguard all of said assets, and any other duties the Court deems appropriate, and to prepare a report to the Court and the Commission detailing the activities of the Defendants and the whereabouts of investor funds.

VII. Records Preservation and Expedited Discovery

Issue an Order requiring the Defendants to preserve any records related to the subject matter of this lawsuit that are in their custody, possession or subject to their control, and to respond to discovery on an expedited basis.

VIII. Repatriation of Investor Proceeds

Issue an Order requiring the Defendants to take such steps as are necessary to repatriate to the territory of the United States all funds and assets of investors described in the Commission's Complaint in this action which are held by them or are under their direct or indirect control, jointly or singly, and deposit such funds into the registry of the United States District Court for the Middle District of Florida, and provide the Commission and the Court a written description of the funds and assets so repatriated.

IX. Officer and Director Bar

Issue an order barring York and Coyne from serving as an officer or director of any public company, pursuant to Section 21(d)(2) of the Exchange Act, as amended by the Sarbanes-Oxley Act of 2002.

X. Further Relief

Grant such other and further relief as may be necessary and appropriate.

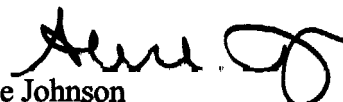
XI. Retention of Jurisdiction

Further, the Commission respectfully requests that the Court retain jurisdiction over this action in order to implement and carry out the terms of all orders and decrees that may hereby be entered, or to entertain any suitable application or motion by the Commission for additional relief within the jurisdiction of this Court.

Dated: September 8 2003

Respectfully submitted,

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