ORIGINAL

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

EDWARD S. DIGGES, JR.; NEXSTAR COMMUNICATIONS, LLC; TMT EQUIPMENT COMPANY, LLC; TMT MANAGEMENT GROUP, LLC; POSA, LLC; POSA TMT, LLC; TELEVEST COMMUNICATIONS, LLC; TELEVEST GROUP, LLC; and SPIN DRIFT, LLC,

Defendants.

CIVIL ACTION FILE
NO. 6:06-cv-137-ORL-19KRS

Complaint For Emergency Injunctive And Other Relief

The plaintiff, Securities and Exchange Commission ("Commission" or the "Plaintiff"), files this complaint and alleges the following:

Summary

1. Between April 2003 and the present, Edward S. Digges, Jr. ("Digges"), a recidivist violator, and various entities controlled by him, have

fraudulently sold securities in the form of investments in "point-of-sale" credit card terminals coupled with lease agreements. The terminals are typically placed at retail establishments, and used by merchants to swipe customer credit, debit, ATM or gift cards. The terminals are sold to investors by an entity controlled by Digges and leased back from the investors by another entity controlled by Digges. The investors are promised a fixed rate of return equivalent to 12 percent per year.

2. Entities controlled by Digges have been selling the terminals for $5,000 each, promising to pay the investors a 12 percent annual return for five years and offers to repurchase the terminals for the full $5,000 purchase price after five years. Digges has raised at least $15 million from 278 investors, many of whom are elderly.

3. Digges has concealed from investors his involvement in the program. The sales materials used to sell the investment falsely portray to investors that the venture is managed by individuals who, in fact, have only nominal roles. Digges has concealed his involvement because he has a prior conviction for misappropriating client assets, and has been disbarred.

4. Digges has misrepresented that the lease payments are "assured," in part through a "reserve fund" that purportedly covers six months of the monthly lease obligations. Digges has also misrepresented that his program maintains a "sinking fund" to fund the eventual repurchase of the terminals.

5. In fact, Digges' program does not maintain any "sinking fund" or "reserve fund." Since June 2005, Digges' program has run a monthly deficit of about $125,000, which Digges has purportedly satisfied through "capital infusions" from his personal assets. The entities contracting with investors do not have assets with which to repurchase the terminals at the end of the five year period.

6. Digges has also failed to disclose that, since April 2003, three state securities commissions have issued orders finding that one or more of the entities controlled by Digges have violated state securities laws by offering the same securities at issue in this matter.

7. During the course of the fraud, Digges has sold the terminals through one or more of the following entities that he controls: Nexstar Communications, LLC; TMT Management Group, LLC; and TMT Equipment Company, LLC; and

leased the terminals back through POSA, LLC and POSA TMT, LLC, which he also owns or controls.

8. During the course of the fraud, Digges has used Spin Drift, LLC; Televest Communications, LLC; and Televest Group, LLC as conduits to funnel funds to and from investors.

9. By virtue of this conduct, Defendants have engaged and, unless enjoined, will continue to engage, in violations of, or conduct that aids and abets violations of, Sections 5(a), 5(c) and 17(a) of the Securities Act of 1933 ("Securities Act")[15 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 promulgated thereunder,[17 C.F.R. 240.10b-5].

Jurisdiction And Venue

10. The Commission brings this action pursuant to Sections 20(b), (c) and (d) of the Securities Act [15 U.S.C. 77t(b)-(d)] and Sections 21(d) and 21(e) of the Exchange Act [15 U.S.C. 78u(d)-(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 ill-gotten gains, civil penalties and other relief.

11. 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].

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

13. Venue lies in this Court 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], because certain of the transactions, acts, practices and courses of business constituting violations of the Securities Act and Exchange Act have occurred within the Middle District of Florida. One or more of the Defendants maintains a principal place of business in Orlando and the securities have been sold to investors in this district.

The Defendants

14. Edward S. Digges, Jr., age 58, is the President, Chief Operating Officer, and part owner of Televest Communications, LLC, and Televest Group, LLC, which in turn hold controlling interests in the remainder of the Digges Entities. Digges controls the daily activities of all of the Digges Entities.

15. Nexstar Communications, LLC ("Nexstar") is a Maryland limited liability company controlled by Digges. Between approximately April 2003 and December 2003, Digges offered and sold terminals to investors through Nexstar.

16. TMT Equipment Company, LLC ("TMT Equipment") is a Delaware limited liability company with its principle place of business in Orlando, Florida and is controlled by Digges. In or around December 2003, Digges began using TMT Equipment to sell terminals to investors.

17. TMT Management Group, LLC ("TMT Management") is a Delaware limited liability company with its principle place of business in Orlando, Florida and is controlled by Digges. In or around December 2003, Digges began using TMT Management to sell terminals to investors.

18. POSA, LLC ("POSA") is a Maryland limited liability company controlled by Digges. Between approximately April 2003 and December 2003, Digges used POSA, LLC to lease back from investors the terminals sold through Nexstar.

19. POSA TMT, LLC ("POSA TMT") is a Delaware limited liability company controlled by Digges with its principal place of business in Orlando, Florida. In or around December 2003, Digges began using POSA/TMT to lease back from investors those terminals sold through either TMT Equipment or TMT Management.

20. Televest Communications, LLC ("Televest Communications") is a Delaware limited liability company controlled by Digges and is the parent company of Nexstar. Throughout the scheme Digges used Televest Communications to funnel money to or from investors.

21. Televest Group, LLC ("Televest Group") is a Delaware limited liability company controlled by Digges and is the parent company of TMT Equipment and TMT Management. Throughout the scheme Digges used Televest Group to funnel money to or from investors.

22. Spin Drift, LLC ("Spin Drift") is a Delaware limited liability company controlled by Digges. Spin Drift received a portion of the proceeds raised from investors. Throughout the scheme, Digges used Spin Drift to funnel money to or from investors.[1]

FACTS

Digges' Investment Program in Point-of-Sale Terminals

23. From at least April 2003 through the present, Defendants have sold more than $15 million of investments in point-of-sale terminals to approximately 278 investors throughout the United States.

24. Point-of-sale terminals are instruments typically placed at retail establishments, which merchants use to swipe customer credit, debit, ATM or gift cards. The terminals verify whether a customer has sufficient available credit or funds to make a particular purchase.

25. The investments are structured so that an investor purchases terminals from one of the Digges Entities for $5,000 and simultaneously enters into a leaseback agreement with another Digges Entity.

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[1] Nexstar; TMT Management; TMT Equipment; POSA; POSA TMT; Spin Drift; Televest Communications; and Televest Group are hereafter collectively

Footnote continued on next page

26. Under the leaseback agreement, the investor is to receive monthly lease payments of $50, representing a 12% annual return, for five years.

27. The defendants represent that lease payment will purportedly come from revenues generated whenever merchants use the terminals. The lease payment to a particular investor is purportedly paid from the revenues of the leasing entity, and is not dependent upon the performance of a particular terminal. For example, Nexstar's literature represented that, for every transaction a merchant processed through a Nexstar terminal, Nexstar would earn 5¢ for every debit card transaction and 2.5¢ for every credit card transaction. Investors have no role in the management of their terminal. All managerial and functional responsibilities are handled by the entity leasing the terminal from the investors or others acting at the entity's behest.

28. The leaseback arrangement obligated the Digges Entity leasing the terminal to repurchase the terminal for $5,000 at the end of the lease.

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referred to as "the Digges Entities."

29. Digges has been selling these investments through a network of sales agents—principally insurance agents, financial planners, or certified public accountants—that stretches throughout the United States, but is concentrated primarily in Texas, Michigan, and Florida.

30. This network is structured like a pyramid with sales agents who sell Digges' investment directly to investors and other sales agents who have developed their own "downstream" network of sales agents.

31. Investors in Digges' program pay total sales commissions ranging from 12 to 18 percent of their total investment, which is then apportioned as compensation to sales agents "upstream" through the network.

32. Between April 2003 and December 2003, Digges offered and sold the terminals through Nexstar, and used POSA to lease the terminals back from investors.

33. During this period, investors were required to purchase a minimum of two terminals for $5,000 each.

34. Upon payment of the funds, investors entered into three agreements: (i) a terminal purchase agreement between the investor and Nexstar; (ii) a lease

agreement between the investor and POSA, requiring POSA to pay the investor $50 per month per terminal in exchange for placing, operating, and maintaining the terminal in a retail store; and (iii) an "option to sell agreement" that gave the investor the option to require POSA at the end of five years to repurchase the terminal from the investor for its full original purchase price of $5,000.

35. Investors were given the option, and provided the forms, to purchase terminals in an Individual Retirement Account ("IRA") and, in the event this option was chosen, referred to a third party IRA administrator located in California to service their account.

36. Although investors were also technically given the option to buy and operate the terminals themselves, the alternative which was chosen by the vast majority, if not all, of the investors was to lease the terminals to POSA in exchange for monthly lease payments.

37. While using Nexstar to sell the terminals and POSA to leaseback the terminals, Digges used Televest Communications as a conduit to funnel proceeds to and from investors.

38. To promote sales of his investment program, Digges had marketing materials prepared that described the terminals and his program and arranged for presentations to sales agents at Nexstar's offices in Orlando, Florida. Digges placed other marketing materials on a website.

39. Digges also prepared and filed disclosure statements with the Federal Trade Commission ("FTC") and various state agencies.

40. Along with his marketing materials, these disclosure statements, or portions of them, were provided to sales agents for their training and eventual use as promotional materials for investors.

41. On November 17, 2003, the state securities commissions of Maryland and Pennsylvania issued against Nexstar and POSA Summary Orders to Cease and Desist ("Summary Orders") from offering and selling terminal investments in those respective states. The Maryland order found that Digges' offering involved fraud.

42. Thereafter, from around January 2004 through the present, Digges continued to offer these investments, but began using TMT Management and TMT Equipment to sell the terminals, and POSA TMT to leaseback the terminals from investors.

43. When Digges began selling terminals through TMT Management and TMT Equipment, he used Spin Drift and Televest Group to transfer funds among the various Digges Entities.

44. Digges also used Televest Group to fund lease payments to the investors and used Spin Drift to repurchase terminals from certain investors.

45. Despite using different entities, Digges' investment program remained essentially unchanged, except that Digges increased the minimum investment from two terminals to five.

46. There has been no registration statement filed with the Commission with respect to the offering of the securities described herein.

Misrepresentations and Omissions

47. The offering materials prepared by Digges and distributed to the sales force and to investors ("offering materials") represent that the lease payments are "assured." In fact, the investment program has run a deficit since at least January 2004 and does not have the assets to pay the promised lease payments or to repurchase the terminals.

48. That deficit has reached $125,000 per month since June 2005, a shortfall that Digges has covered with "capital infusions" from his personal assets.

49. Digges' marketing materials represented that the obligations of POSA to pay monthly lease payments were "assured" through the creation of a "reserve fund." Specifically, the materials state that "[t]o help insure that the monthly lease payments are available as due to our lessors, POSA maintains a six (6) month cash reserve fund for each and every lease it maintains."

50. Digges and employees of his entities have also represented that his program maintains a "reserve fund" or "sinking fund" to assure the repurchase of terminals. For example, in or around 2003, Digges told Christopher Morris, a sales agent, that the sinking fund for terminal repurchase was maintained at Fidelity Investments and, with each terminal purchase, funded with a $1,000 contribution from Digges Entities and thereafter $75 per month during the term of the five year lease.

51. In addition, Chris Haug, the chief financial officer of Nexstar, represented in a January 29, 2004 letter to Jack Brown, another sales agent selling Digges' investment program, that a reserve fund would be maintained.

52. Investors were also told that the program maintained a reserve fund to cover the lease payments and or the repurchase of terminals.

53. In truth, neither Digges nor any of the Digges Entities have established a reserve fund or sinking fund to cover the lease payments or the repurchase of terminals.

54. Digges' offering materials also tout the experience, expertise and integrity of management, representing that, within the last seven years, management has no criminal or civil liability involving fraud.

55. The offering materials describe persons as managing the entities who in fact have only nominal roles. The offering materials conceal Digges' substantial and controlling role in the program and do not disclose Digges' 1990 mail fraud conviction, which arose from his over-billing of a client.

56. In that matter, Digges was sentenced to 30 months of incarceration and ordered to pay $1 million in restitution to his former client.

57. Digges' offering materials also fail to disclose the 1989 civil judgment against Digges for fraud, deceit and breach of contract. That judgment

ordered Digges and his law firm, jointly and severally, to pay $3,634,801.92, including $510,386.99 in prejudgment interest.

58. Nor do the offering materials disclose that Digges, formerly a lawyer licensed in Maryland, was disbarred following his felony conviction.

59. Prospective investors are also not advised, through the offering materials or otherwise, of the existence or the magnitude of sales commissions that investors are paying to sales agents on terminal investments, i.e., 12 to 18 percent of their total invested funds.

60. Since at least December 2003, Digges has not disclosed to investors that the state securities commissions of Maryland, Pennsylvania, and Ohio have issued orders finding that one or more Digges Entities have violated state securities laws by engaging in the offering.

61. Nor has Digges disclosed that the Maryland order found that the offering involved fraud.

COUNT I — UNREGISTERED OFFERING OF SECURITIES

Violations of Sections 5(a) and 5(c) of the Securities Act
[15 U.S.C. §§ 77e(a) and 77e(c)]

62. Paragraphs 1 through 61 are restated and incorporated herein by reference.

63. No registration statement has been filed or is in effect with the Commission pursuant to the Securities Act and no exemption from registration exists with respect to the transactions described herein.

64. From at least April 2003 through the present, defendants Digges, Nexstar, TMT Management, TMT Equipment, POSA and POSA TMT, singly and in concert, have:

(a) made use of the means or instruments of transportation or communication in interstate commerce or of the mails to sell securities, through the use or medium of a prospectus or otherwise;

(b) carried securities or caused such securities to be carried through the mails or in interstate commerce, by any means or instruments of transportation, for the purpose of sale or for delivery after sale; and

(c) made 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 securities, through the use or medium of any prospectus or otherwise,

without a registration statement having been filed with the Commission as to such securities.

65. By reason of the foregoing, defendants Digges, Nexstar, TMT Management, TMT Equipment, POSA and POSA TMT, directly and indirectly, singly and in concert, have violated Sections 5(a) and 5(c) of the Securities Act [15 U.S.C. §§ 77e(a) and 77e(c)].

COUNT II – FRAUD

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

66. Paragraphs 1 through 61 are hereby realleged and are incorporated herein by reference.

67. Digges, Nexstar, TMT-Equipment, TMT-Management, POSA, and POSA-TMT, in the offer and sale of the securities described herein, by the use of

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

(a) employed devices, schemes and artifices to defraud purchasers of such securities, all as more particularly described above;

(b) obtained money or property by means of untrue statements of material facts or omissions of material facts necessary in order to make the statements made, not misleading; and

(c) engaged in transactions, practices and a course of business which operated as a fraud or deceit upon the purchasers of such securities, all as more particularly described in the paragraphs above.

68. In engaging in such devices, schemes and artifices to defraud Defendants Digges, Nexstar, TMT Equipment, TMT Management, POSA, and POSA TMT acted with scienter, that is, with an intent to deceive, manipulate or defraud or with a severe reckless disregard for the truth.

69. By reason of the foregoing, the defendants Digges, Nexstar, TMT Equipment, TMT Management, POSA, and POSA TMT, directly and indirectly,

have violated and, unless enjoined, will continue to violate Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)].

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]

70. Paragraphs 1 through 61 are hereby realleged and are incorporated herein by reference.

71. From at least November 1, 2001 through the present, defendants Digges, Nexstar, TMT Equipment, TMT Management, POSA, and POSA TMT, in connection with the purchase and sale of securities described herein, by the use of the 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 light of the circumstances under which they were made, not misleading; and

c) engaged in acts, practices, and courses of business which would and did operate as a fraud and deceit upon the purchasers of such securities, all as more particularly described above.

72. Defendants Digges, Nexstar, TMT Equipment, TMT Management, POSA, and POSA TMT knowingly, intentionally, and/or recklessly engaged in the aforementioned devices, schemes and artifices to defraud, made untrue statements of material facts and omitted to state material facts, and engaged in fraudulent acts, practices and courses of business. In engaging in such conduct, the defendants acted with scienter, that is, with intent to deceive, manipulate or defraud or with a severe reckless disregard for the truth.

73. By reason of the foregoing, defendants Digges, Nexstar, TMT Equipment, TMT Management, POSA, and POSA TMT, directly and 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 thereunder [17 C.F.R. 240.10b-5].

COUNT IV—AIDING and ABETTING FRAUD

Aiding and Abetting Violations of Section 10(b) of the Exchange Act [15 U.S.C. § 78m(a)] and Rule 10b-5 thereunder [17 C.F.R. §§ 240.10-b-5]

74. Paragraphs 1 through 61 are hereby realleged and are incorporated herein by reference.

75. From at least April 2003 through the present, Defendants Spin Drift, Televest Group and Televest Communications aided and abetted violations by Digges, Nexstar, TMT Equipment, TMT Management, POSA, and POSA TMT of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. Those primary violations occurred when, in connection with the purchase or sale of securities described herein, by the use of the means and instrumentalities of interstate commerce and by the 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 light of the circumstances under which they were made, not misleading; and

c) engaged in acts, practices, and courses of business which would and did operate as a fraud and deceit upon the purchasers of such securities, all as more particularly described in the paragraphs above.

76. Defendants Spin Drift, Televest Group and Televest Communications knowingly, intentionally, and/or recklessly provided substantial assistance to the aforementioned fraudulent conduct. While providing such assistance, defendants Spin Drift, Televest Group and Televest Communications

acted with scienter, that is, with intent to deceive, manipulate or defraud or with a severe reckless disregard of the truth and with full knowledge of the qrongding of the primary violators.

77. By reason of the foregoing, defendants Spin Drift, Televest Group and Televest Communications directly and indirectly, have aided and abetted, and unless enjoined will continue to aid and abet, 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].

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Commission respectfully prays for:

I.

Findings of Fact and Conclusions of Law pursuant to Rule 52 of the Federal Rules of Civil Procedure, finding that the Defendants named herein committed the violations alleged herein.

II.

A temporary restraining order, preliminary and permanent injunctions enjoining the defendants Digges, Nexstar, TMT Equipment, TMT Management, POSA, and POSA TMT, Spin Drift, Televest Group and Televest

Communications, their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them who receive actual notice of the order of injunction, by personal service or otherwise, and each of them, whether as principals or as aiders and abettors, from violating, directly or indirectly, Sections 5(a), 5(c) and 17(a) of the Securities Act, 15 U.S.C. 77e(a), 77e(c) and 77q(a), Section 10(b) of the Exchange Act, 15 U.S.C. 78j(b), and Rule 10b-5 [17 C.F.R. 240.10b-5] promulgated thereunder.

III.

An order requiring accountings by the Defendants and ordering them to disgorge all ill-gotten gains or unjust enrichment, with prejudgment interest thereon, to effect the remedial purposes of the federal securities laws, and an order freezing the assets of the defendants and preserving documents, in order to preserve the status quo.

V.

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.

VI.

An Order appointing a Receiver for the assets of defendants Nexstar; TMT Equipment; TMT Management; POSA; POSA TMT; Televest; Televest Group; and Spindrift.

VII.

An Order freezing the assets of Defendants Digges, Nexstar; TMT-E; TMT-M; POSA; POSA TMT; Televest; Televest Group; and Spindrift.

VIII.

Such 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: February 2, 2006

Respectfully submitted,

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