

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

**SECURITIES AND EXCHANGE
COMMISSION,**

Plaintiff,

v.

ANTHONY T. BANAS,

Defendant.

COMPLAINT

Plaintiff, the United States Securities and Exchange Commission (“SEC” or “Commission”), alleges as follows:

NATURE OF THE ACTION

1. During the period from at least October 2008, through at least November 2009, defendant Anthony T. Banas (“Banas” or “Defendant”), as Chief Technology Officer (“CTO”) of Canopy Financial, Inc. (“Canopy”), directly participated in a fraudulent scheme by and through Canopy to raise \$75 million from investors in a private placement offering for Canopy preferred securities (the “2009 Canopy Offering”). To induce investors into the 2009 Canopy Offering, Banas, in his capacity as Canopy’s CTO, participated in a scheme to provide false financial information about Canopy to investors.

2. Specifically, Banas, directly and acting together with Jeremy J. Blackburn (“Blackburn”):

- a. provided unsuspecting investors with forged bank account statements that misrepresented Canopy's financial condition;
- b. arranged and executed a client conference call for an investor in the due diligence process with a Canopy employee posing as the client; and
- c. failed to inform investors that Canopy was not operating profitably before the 2009 Canopy Offering.

3. As part of the 2009 Canopy Offering, Banas received approximately \$975,548.25 after redeeming 150,000 shares of Canopy common stock.

4. By virtue of his conduct as alleged herein, Defendant has engaged in transactions, acts, practices, and courses of business that constitute violations of 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 promulgated thereunder [17 C.F.R. § 240.10b-5].

5. The Commission, in the interest of protecting the public from further fraudulent activity and to provide relief to investors injured by Defendant's fraudulent scheme, brings this civil enforcement action for a judgment: (a) permanently enjoining Defendant from future violations of the antifraud provisions of the securities laws; (b) requiring Defendant to disgorge his ill-gotten gains, plus prejudgment interest thereon; (c) imposing an appropriate civil penalty against Defendant; and (d) such other relief as the Court deems appropriate.

JURISDICTION

6. The Commission brings this action pursuant to the authority conferred by Section 20(b) of the Securities Act [15 U.S.C. § 77t(b)] and Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)] seeking to restrain and enjoin permanently Defendant from engaging in the

acts, practices, transactions, and courses of business alleged herein, and for such other equitable relief as may be appropriate or necessary for the benefit of investors.

7. The Commission also seeks a final judgment ordering Defendant to disgorge ill-gotten gains and pay prejudgment interest thereon, and ordering Defendant to pay a civil money penalty pursuant to Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)] and Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)].

8. This Court has jurisdiction over this action, and venue lies in this District, pursuant to Sections 20(d) and 22(a) of the Securities Act [15 U.S.C. §§ 77t(d) and 77v(a)] and Sections 21(d) and 27 of the Exchange Act [15 U.S.C. §§ 78u(d) and 78aa]. Defendant, directly or indirectly, singly or in concert with others, has made use of the means or instruments of transportation or communication in, and the means or instrumentalities of, interstate commerce, or of the mails, in connection with the transactions, acts, practices, and courses of business alleged herein. Some of these transactions, acts, practices, and courses of business occurred in the Northern District of Illinois, where Defendant is a resident, and where Defendant made certain representations during the relevant period.

9. The Defendant has, directly or indirectly, made use of the mails, and of the means and instrumentalities of interstate commerce, in connection with the transactions, acts, practices, and courses of business alleged in this Complaint.

10. There is a reasonable likelihood that Defendant will, unless enjoined, continue to engage in the transactions, acts, practices, and courses of business set forth in this Complaint, and transactions, acts, practices, and courses of business of similar purport and object.

DEFENDANT

11. **Anthony T. Banas**, age 32, is a resident of Chicago, Illinois. Banas, one of three founders of Canopy, served as Canopy's CTO and was a member of Canopy's Board of Directors. Banas has never held any securities industry licenses.

THE 2009 CANOPY OFFERING

12. At the time of the acts alleged in this Complaint, Canopy was a privately-held Delaware corporation with its headquarters in Chicago, Illinois, and other offices located in San Francisco, California and Plainsboro, New Jersey. Canopy provided a platform to assist its clients with administering and managing their employees' individual health savings and flexible spending accounts ("HSA/FSAs"). Canopy was founded in or about December 2004 by Blackburn, Vikram A. Kashyap ("Kashyap"), and Banas. Until approximately early November 2009, Kashyap was Chief Executive Officer, Blackburn was Chief Operating Officer and President, and Banas was CTO. Canopy is not registered with the Commission in any capacity.

13. On November 25, 2009, Canopy filed a Chapter 11 bankruptcy petition, which was then converted to a Chapter 7 bankruptcy filing on December 30, 2009.

14. Beginning in or about October 2008, Canopy, through Banas, Blackburn, and Kashyap began discussing a private placement offering for the sale of Canopy Series D preferred stock with prospective investors. These investors included Spectrum Equity Investors V, LP ("Spectrum"), a private equity investment firm with clients such as pension plans, private foundations, and other entity and individual investors. Canopy informed investors that the funds raised in the proposed offering would fund Canopy's operations and expansion and pay certain redeeming shareholders.

15. Before the 2009 Canopy Offering, Banas, Blackburn, and Kashyap initially owned 100% of Canopy's shares. Between Canopy's formation in December 2004 and the 2009 Canopy Offering, Banas, Blackburn, and Kashyap retained shares and additional new investors acquired a certain number of Canopy preferred shares. Banas, Blackburn, and Kashyap continued to retain a majority of the Canopy shares after the 2009 Canopy Offering.

16. Beginning in approximately early 2009, Spectrum began conducting due diligence to determine whether it would invest in Canopy's private placement offering.

17. Spectrum requested that Canopy, through Blackburn, Kashyap, and Banas, provide, among other things, information about Canopy's financial condition, including audited financial statements, monthly operating reports, and proof of cash.

**BANAS' MISREPRESENTATIONS AND
OMISSIONS DURING THE 2009 CANOPY OFFERING**

The False Northern Trust Company Bank Account Statements

18. Banas, directly and through Blackburn, provided Northern Trust Company ("Northern Trust") bank account statements to Spectrum purporting to show Canopy's cash balance for the periods January 2009 through June 2009 as part of a "proof of cash."

19. Banas forged, or caused to be forged, the purported January 2009 through May 2009 Northern Trust bank account statements with the knowledge that if the "proof of cash" was not successful Spectrum would not close on the offering. Banas then provided the forged statements directly to Spectrum before the 2009 Canopy Offering.

20. Banas also forged, or caused to be forged, the purported June 2009 Northern Trust bank account statement with the knowledge that if the "proof of cash" was not successful Spectrum would not close on the offering. Banas then provided the forged statement to Blackburn with the knowledge that Blackburn intended to forward it to Spectrum.

21. The falsified statements showed that a Canopy bank account held millions in the account between January 2009 and June 2009. In reality, the account at Northern Trust was a Canopy client's custodial account that held only \$85,000 by June 2009.

Fake Client Reference Call

22. As part of the due diligence process before the 2009 Canopy Offering, Banas coordinated a client reference call between Spectrum and a purported representative of Blue Healthcare Bank ("BHCB").

23. Banas arranged for a Canopy employee to impersonate the BHCB representative. In the call, the Canopy employee, on instructions from Banas, lied about the number of BHCB accounts at Canopy.

Omissions Regarding Canopy's Financial Condition and Banas' and Blackburn's Misappropriations

24. Banas failed to inform Spectrum or any of the other investors that Canopy was not operating profitably before the 2009 Canopy Offering.

25. Banas failed to inform Spectrum or any other investors that he and Blackburn misappropriated a total of approximately \$19 million from individual HSA/FSA clients between 2004 and the 2009 Canopy Offering.

Banas' False Educational Information

26. Banas falsely claimed to be a Loyola University Chicago graduate on Canopy's website.

**INVESTORS IN THE 2009 CANOPY OFFERING INVESTED
BASED ON BANAS' MISREPRESENTATIONS AND OMISSIONS**

27. After conducting due diligence and reviewing the information provided by Canopy, through Banas and others, Spectrum and other investors decided to invest in the 2009 Canopy Offering.

28. The offering closed in two phases. In July 2009, Spectrum and two other investors paid approximately \$63,073,243 in exchange for 8,898,245 shares of preferred stock. In August 2009, Spectrum and two additional investors paid approximately \$11,926,751 in exchange for 1,682,602 shares of preferred stock. In total, Canopy raised and received approximately \$75 million in the 2009 Canopy Offering.

29. As part of the 2009 Canopy Offering, Canopy paid approximately \$40 million in redemptions to previously existing investors. Canopy received the net proceeds from the 2009 Canopy Offering after the share redemptions and the costs associated with the offering were satisfied.

THE FRAUD IS EXPOSED

30. In or about November 2009, Canopy, through its newly-employed General Counsel, began a search for a Chief Financial Officer and contacted an acquaintance at KPMG, LLP ("KPMG") for possible candidates. Canopy's General Counsel sent what he understood were the "KPMG Independent Auditor's Report," (hereinafter referred to as the "KPMG Audit Report") dated June 29, 2009, and a document titled "Canopy Financial, Inc. Consolidated Financial Statements for the years ended December 31, 2009 and 2007 (With Independent Auditors' Report Thereon)" (hereinafter referred to as "Canopy's audited financial statements") to his KPMG acquaintance. In reality, the KPMG Audit Report and "Canopy's audited financial statements" were, with the knowledge of Banas, forged by Blackburn.

31. KPMG quickly responded to Canopy and advised Canopy in a "Cease-and-Desist Demand" letter dated November 3, 2009, that Canopy used KPMG's name without KPMG's authorization and consent. Further, KPMG told Canopy that it: (1) had never been retained nor agreed to audit any of Canopy's financial statements; and (2) did not issue the audit opinion dated June 29, 2009. KPMG demanded, among other things, that Canopy "immediately CEASE AND DESIST from using the subject report and/or the unauthorized use of the KPMG name...."

32. KPMG did not prepare the KPMG Audit Report that Blackburn, and through him Canopy, gave to Spectrum and other investors in connection with the 2009 Canopy Offering, and neither reviewed nor audited "Canopy's audited financial statements" that Blackburn, and through him Canopy, gave to investors in connection with the 2009 Canopy Offering.¹

BANAS' ILL-GOTTEN GAINS

33. Banas received \$975,548.25 in the 2009 Canopy Offering after redeeming 150,000 shares of common stock.

COUNT I

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

34. Paragraphs 1 through 33 are realleged and incorporated herein by reference.

35. As is set forth more fully herein, Banas, in the offer or sale of securities, by the use of the means and instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly employed devices, schemes, or artifices to defraud.

36. Banas knowingly or recklessly engaged in the fraudulent conduct described above.

¹ For related SEC case, see *SEC v. Canopy Financial, Inc. and Jeremy J. Blackburn*, Case No. 09-cv-7429 (N.D. Ill.) (Nov. 30, 2009), before the Honorable Blanche M. Manning.

37. By reason of the foregoing, Banas violated Section 17(a)(1) of the Securities Act [15 U.S.C. § 77q(a)(1)].

COUNT II

**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)]**

38. Paragraphs 1 through 33 are realleged and incorporated herein by reference.

39. Banas, in the offer or sale of securities, by the use of the means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly has obtained money or property by means of untrue statements of material fact or 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; or engaged in a transaction, practice, or course of business which operated or would operate as a fraud or deceit upon purchasers of securities.

40. By reason of the foregoing, Banas violated Sections 17(a)(2) and 17(a)(3) of the Securities Act [15 U.S.C. §§ 77q(a)(2) and 77q(a)(3)].

COUNT III

**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]**

41. Paragraphs 1 through 33 are realleged and incorporated by reference.

42. Banas, in connection with the purchase or sale of securities, directly or indirectly, by the use of the means or instrumentalities of interstate commerce or of the mails: (a) used or employed a device, scheme, or artifice to defraud; (b) made untrue statements of material fact or 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,

or courses of business which operated or would operate as a fraud and deceit upon the purchasers and prospective sellers of such securities.

43. Banas acted knowingly or recklessly when he engaged in the fraudulent conduct described above.

44. By reason of the foregoing, Banas violated Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5].

RELIEF REQUESTED

WHEREFORE, the Commission requests that this Court enter a judgment:

A. Finding that Defendant Banas committed the violations alleged against him herein;

B. Permanently enjoining and restraining Defendant Banas from further violations of Sections 17(a)(1), (2), and (3) of the Securities Act [15 U.S.C. §§ 77q(a)(1), (2), and (3)] and Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5];

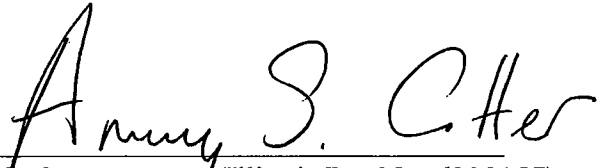
C. Ordering Defendant Banas to pay as disgorgement all ill-gotten gains obtained through the 2009 Canopy Offering, plus prejudgment interest thereon;

D. Ordering Defendant Banas to pay an appropriate civil monetary penalty 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)];

E. Retaining jurisdiction over this action to implement and carry out the terms of all orders and decrees that may be entered and to entertain any suitable application or motion for additional relief within the jurisdiction of the Court; and

F. Granting such other and additional relief as this Court deems appropriate.

Respectfully Submitted,

A handwritten signature in black ink, reading "Amy S. Cotter". The signature is fluid and cursive, with the first letters of each name being capitalized and prominent.

Amy S. Cotter (Illinois Bar No. 6238157)

Attorney for Plaintiff

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