

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 02-61672-CIV-COHN/SELTZER

SECURITIES AND EXCHANGE COMMISSION, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 VIRTUAL CASH CARD LLC, )  
 d/b/a VIRTUAL CASH, )  
 ERIC L. TURNER, )  
 KENNETH M. MAY, )  
 OMNI ADVERTISING, INC., and )  
 ANTHONY JOSEPH PINONE )  
 )  
 Defendants, )  
 )  
 and )  
 )  
 VIRTUAL CASH CARD INTERNATIONAL, INC., )  
 OMNI ADVERTISING AND MARKETING, INC., and )  
 KENANCE CONSULTING, INC. )  
 )  
 Relief Defendants. )  
 )

FILED by SKW D.C.  
 JAN 30 2004  
 CLARENCE MADDOX  
 CLERK U.S. DIST. CT.  
 S.D. OF FLA. FT. LAUD.

**FINAL JUDGMENT OF PERMANENT INJUNCTION AND  
OTHER RELIEF AS TO DEFENDANT KENNETH M. MAY**

Plaintiff Securities and Exchange Commission (“SEC” or “Commission”) commenced this action by filing its Complaint against, among others, Defendant Kenneth M. May (“Defendant”). In its Complaint, the Commission sought, among other relief, a permanent injunction to prohibit violations by the Defendant of Sections 5(a), 5(c) and 17(a) of the Securities Act of 1933 (“Securities Act”), Sections 10(b) and 15(a)(1) of the Securities Exchange Act of 1934 (“Exchange Act”), and Rule 10b-5, thereunder, an order providing for disgorgement and prejudgment interest thereon, and imposition of a civil money penalty against

Defendant pursuant to Section 20(d) of the Securities Act and Section 21(d) of the Exchange Act.

Defendant, by the Consent affixed hereto, without admitting or denying any of the allegations in the Commission's Complaint or any other paper filed herein, except as to the jurisdiction of this Court, has agreed to the entry of this Final Judgment of Permanent Injunction and Other Relief ("Final Judgment"). This Court having accepted such Consent and this Court having jurisdiction over the Defendant and the subject matter hereof, and the Court being fully advised in the premises,

**I.**

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

**IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that Defendant, his officers, agents, servants, employees, representatives, and all persons in active concert or participation with him, and each of them, directly or indirectly, who receive actual notice of this Final Judgment, by personal service or otherwise, be and they hereby are permanently restrained and enjoined from, directly or indirectly:

- (a) making use of the means or instruments of transportation or communication in interstate commerce or of the mails to sell any security, in the form of units, common stock, warrants or any other security, through the use or medium of any prospectus or otherwise, unless and until a registration statement is in effect with the Commission as to such security;
- (b) carrying or causing to be carried through the mails or in interstate commerce, by means or instruments of transportation, any security, in the form of units, common stock, warrants or any other security, for the purpose of sale or delivery after sale,

unless and until a registration statement is in effect with the Commission as to such security; or

- (c) making use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell or offer to buy any security, in the form of units, common stock, warrants or any other security, through the use or medium of any prospectus or otherwise, unless and until a registration statement is filed with the Commission as to such security, or while a registration statement filed with the Commission as to such security is the subject of a refusal order or stop order or (prior to the effective date of the registration statement) any public proceeding or examination under Section 8 of the Securities Act, 15 U.S.C. § 77h,

in violation of Sections 5(a) and 5(c) of the Securities Act, 15 U.S.C. §§ 77e(a) and 77e(c).

## II.

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

**IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED** that Defendant, his officers, agents, servants, employees, representatives, and all persons in active concert or participation with him, and each of them, directly or indirectly, who receive actual notice of this Final Judgment, by personal service or otherwise, be and they hereby are, permanently restrained and enjoined from, directly or indirectly, singly or in concert, as aiders and abettors or otherwise, in the offer or sale of any security, by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails:

- (a) knowingly employing any device, scheme or artifice to defraud;
- (b) obtaining money or property by means of any untrue statement of material fact or omission to state any material fact necessary in order to make the statement made, in light of the circumstances under which it was made, not misleading; or

- (c) engaging in any transaction, practice or course of business which operates or would operate as a fraud or deceit upon purchasers or prospective purchasers of any such security,

in violation of Sections 17(a)(1), 17(a)(2) and 17(a)(3) of the Securities Act, 15 U.S.C. §§ 77q(a)(1), 77q(a)(2) and 77q(a)(3).

### III.

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

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that Defendant, his officers, agents, servants, employees, representatives, and all persons in active concert or participation with him, and each of them, directly or indirectly, who receive actual notice of this Final Judgment, by personal service or otherwise, be and they hereby are, permanently restrained and enjoined from, knowingly, willfully, or recklessly, directly or indirectly, singly or in concert, as aiders and abettors or otherwise, in connection with the purchase or sale of any security, by the use of any means or instrumentality of interstate commerce or of the mails, or of any facility of any national securities exchange:

- (a) employing any device, scheme or artifice to defraud;
- (b) making any untrue statements of material fact or omitting to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or
- (c) engaging in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person,

in violation of Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5, 17 C.F.R. § 240.10b-5, thereunder.

IV.

**VIOLATION OF SECTION 15(a)(1) OF THE EXCHANGE ACT**

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that Defendant, his officers, agents, servants, employees, representatives, and all persons in active concert or participation with him, and each of them, directly or indirectly, who receive actual notice of this Final Judgment, by personal service or otherwise, be and they hereby are, permanently restrained and enjoined from, directly or indirectly, making use of the mails or any means or instrumentality of interstate commerce to effect any transactions in, or to induce or attempt to induce the purchase or sale of securities, while acting as a broker or dealer engaged in the business of effecting transactions in securities for the accounts of others, but not registered as a broker-dealer in accordance with Section 15(b) of the Exchange Act, 15 U.S.C. § 78o(b), in violation of Section 15(a)(1) of the Exchange Act, 15 U.S.C. § 78o(a)(1).

V.

**DISGORGMENT AND CIVIL PENALTY**

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that Defendant shall pay disgorgement in the amount of \$32,031, representing the proceeds he received as a result of the conduct alleged in the Complaint, together with prejudgment interest thereon in the amount of \$834.16.

**IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED** that Defendant is jointly and severally liable with Defendant Eric L. Turner for disgorgement in the amount of \$320,000, representing the proceeds they received as a result of the conduct alleged in the Complaint, together with prejudgment interest in the amount of \$7,537.50.

In partial satisfaction of the disgorgement ordered herein, Defendant shall stipulate to the release and transfer of funds currently held frozen in the following bank accounts maintained at the

Washington Mutual Bank ("Washington Mutual") to the Clerk of the Court within thirty (30) days after the entry of this Final Judgment:

- (1) Washington Mutual Account No. 42900001872129 in the name of KENNETH M. MAY;
- (2) Washington Mutual Account No. 48600001242611 in the name of KENNANCE CONSULTING, INC.

Defendant shall further stipulate that he relinquishes all legal and equitable right, title, and interest in such funds, and no part of the funds shall be returned to Defendant. The balance of the disgorgement owed by Defendant shall be paid in accordance with the provisions in Paragraph VI. below.

**IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED** that Defendant shall pay a civil money penalty in the amount of \$120,000, pursuant to Section 20(d) of the Securities Act, 15 U.S.C. § 7t(d), and Section 21(d) of the Exchange Act, 15 U.S.C. § 78(d)(3).

## VI.

### PAYMENT INSTRUCTIONS

**IT IS HEREBY FURTHER ORDERED** that Defendant shall satisfy the disgorgement and civil penalty ordered herein by making payment within thirty (30) days to the Clerk of this Court, together with a cover letter identifying KENNETH M. MAY as a Defendant in this action; setting forth the title and civil action number of this action and the name of this Court; and specifying that payment is made pursuant to the Final Judgment. Defendant shall simultaneously transmit photocopies of such payment and letter to: Teresa J. Verges, Regional Trial Counsel, Securities and Exchange Commission, 801 Brickell Avenue, Suite 1800, Miami, Florida 33131.

By making this payment, Defendant relinquishes all legal and equitable right, title, and interest in such funds, and no part of the funds shall be returned to Defendant. The Clerk shall deposit the funds into an interest bearing account with the Court Registry Investment System ("CRIS"). These funds, together with any interest and income earned thereon (collectively, the "Fund") shall be held by the CRIS until further order of the Court. In accordance with the guidelines set by the Director of the Administrative Office of the United States Courts, the Clerk is directed, without further order of this Court, to deduct from the income earned on the money in the Fund a fee equal to ten percent of the income earned on the Fund. Such fee shall not exceed that authorized by the Judicial Conference of the United States. The Commission may by motion propose a plan to distribute the Fund subject to the Court's approval. Such a plan may provide that the Fund shall be distributed pursuant to the Fair Fund provisions of Section 308(a) of the Sarbanes-Oxley Act of 2002. Regardless of whether any such Fair Fund distribution is made, amounts ordered to be paid as civil penalties pursuant to this Final Judgment shall be treated as penalties paid to the government for all purposes, including tax purposes.

**VII.**

**INCORPORATION OF CONSENT**

**IT IS HEREBY FURTHER ORDERED** that Defendant shall comply with the provisions of the Consent attached hereto, and that such Consent is incorporated herein by reference as if fully set forth herein.

**VIII.**

**RETENTION OF JURISDICTION**

**IT IS FURTHER HEREBY ORDERED** that this Court will retain jurisdiction over this matter and the Defendant in order to implement and carry out the terms of all Orders and Decrees that may be entered and/or to entertain any suitable application or motion for additional relief within

the jurisdiction of this Court, and will order other relief that this Court deems appropriate under the circumstances.

**DONE AND ORDERED** at 2:00 o'clock p.m. this 30<sup>th</sup> day of JANUARY 2004 at  
~~FT. LAUDERDALE~~  
~~Miami~~, Florida.

  
HONORABLE JAMES I. COHN  
UNITED STATES DISTRICT JUDGE

Copies to:

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