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DISTRICT OF UTAH

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U.S. DISTRICT COURT

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UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION



SECURITIES AND EXCHANGE COMMISSION,
Plaintiff,

Civil No. 02: 2 CV 0110B

v.

GARY L. MOODY,
STEVEN R. MOODY,
VIRTUAL PRIVATE MARKETPLACE, LTD., and
BILLPAY SYSTEMS LLC,

Defendants.

Entered on docket
 By:

Deputy Clerk

**AMENDED FINDINGS, ORDER AND FINAL JUDGMENT GRANTING
PLAINTIFF SECURITIES AND EXCHANGE COMMISSION'S REQUEST FOR CIVIL
MONEY PENALTIES OF \$1 MILLION DOLLARS
AGAINST EACH OF DEFENDANTS GARY AND STEVEN MOODY**

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On October 24, 2002, this Court entered an order granting the Commission's motion for summary judgment: (1) prohibiting defendants Virtual Private Marketplace, Ltd. ("VPM"), Billpay Systems LLC ("Billpay"), Gary L. Moody ("G. Moody"), and Steven R. Moody ("S. Moody") (collectively referred to as "defendants") from violating the anti-fraud and securities registration provisions of the federal securities laws; (2) ordering the defendants to disgorge all ill-gotten gains and to pay prejudgment interest; and (3) ordering the defendants to pay the maximum civil money penalties. In its order, the Court directed the Commission to submit for the Court's consideration a proposed order setting forth the proper amount of maximum civil penalties. Order of August 8, 2002, Para. X ("Order").

After consultation with the Commission, counsel for the Commission proposed that the amount be set at \$1,000,000 for each of the individual defendants, Gary L. Moody and Steven R. Moody. The Commission proposed that no civil money penalty be sought against the corporate defendants, since they are simply shell entities without any assets. The Commission advised the Court that it had concluded that a \$1 million civil money penalty is appropriate for the individual defendants because of the egregious nature of their conduct, lack of remorse and frequent flaunting of this Court's orders.

The Court being fully advised in the premises, having read the Commission's Memorandum of Law and other submissions to the Court on the merits of the action, and there being no just reason for delay,

THE COURT HEREBY FINDS AS FOLLOWS:

FACTS ESTABLISHING LIABILITY FOR CIVIL MONEY PENALTIES

1. On October 24, 2002, this Court entered an order granting the Commission's motion for summary judgment: (1) prohibiting defendants Virtual Private Marketplace, Ltd.

("VPM"), Billpay Systems LLC ("Billpay"), Gary L. Moody ("G. Moody"), and Steven R. Moody ("S. Moody") (collectively referred to as "defendants") from violating the anti-fraud and securities registration provisions of the federal securities laws; (2) ordering the defendants to disgorge all ill-gotten gains and to pay prejudgment interest; and (3) ordering the defendants to pay the maximum civil money penalties. In its order, the Court directed the Commission to submit for the Court's consideration a proposed order setting forth the proper amount of maximum civil penalties. (Para. X.)

2. The Commission has now submitted its recommendation that civil money penalties in the amount of \$1 million be assessed against Gary L. Moody and \$1 million be assessed against Steven R. Moody.

3. The individual defendants are relatively young and capable of earning a sufficient living to pay a portion of their future income towards disgorgement and the civil money penalties.

4. As this Court has found in its Order entered on October 24, 2002, the defendants are repeat offenders. In February of 1999 the Commission obtained a default judgment against Gary Moody out of a prime bank fraud enjoining him from engaging in fraudulent activity in violation of Section 10(b) of the Exchange Act and Section 17(a) of the Securities Act. *SEC v. DeSimone, DeCabia and Moody*, Civil Action No. 97-CIV-9359 (S.D.N.Y.)(LBS). In connection with the same fraud, Gary Moody pled guilty in 1997 to a scheme to defraud in the first degree in New York State and was sentenced to six months in jail and five years probation. In a separate matter, he was also convicted of securities fraud by the state of Utah in 1997 (although that conviction may be dismissed if he makes full restitution). Moreover, defendant Steven R. Moody was barred on September 9, 2001, from association with any National

Association of Securities Dealer member firm for conversion of \$23,000 of customers' funds to his personal benefit. Order FOF ¶ 9.

5. The defendants have contemptuously ignored numerous court orders in this proceeding and have shown no remorse for their actions. They failed to appear for their depositions on two separate occasions, and only appeared when directly ordered to do so by the Court or be arrested. They failed to provide a complete accounting in contravention of three orders of this Court. Steven R. Moody violated this Court's freeze order by selling one of the automobiles, purchasing another and placing it in his wife's name, and spending approximately six thousand dollars realized on the transaction. S. Moody Depo., pp. 12-13 and 18, Ex. 10 at p. 4, and Ex. 11 ¶ 6.i. When finally forced to appear for their depositions and produce an accounting, the defendants refused to comply citing their Fifth Amendment right not to incriminate themselves. Importantly, Gary and Steven Moody claimed the Fifth Amendment to every question asked of them, including factual questions about the matters that are the subject of each of the Statement of Material Facts Not In Dispute upon which the motion for summary judgment is based. G. Moody Depo., pp. 1-68; S. Moody Depo., pp. 1-91. Order FOF ¶ 12.

6. At least \$713,328.44 of investors' funds were deposited by the defendants into various bank accounts, and at least \$385,821 in cash was withdrawn from these accounts by the defendants. The \$713,328.44 in investors' funds have not been fully accounted for by the defendants, very little of the funds have been returned to the investors, and none of the funds were used for their represented purposes. Welter Decl. II, ¶ 9. Order FOF ¶ 13.

7. Defendants Gary L. Moody and Steven R. Moody made numerous fraudulent misrepresentations to more than 100 investors in order to fraudulently induce them to part with their money.

CONCLUSIONS OF LAW

1. When determining the appropriate civil penalty to impose under Section 20(d)(2) of the Securities Act, 15 U.S.C. §77t(d)(2), and Section 21(d)(3) of the Exchange Act, 15 U.S.C. §78u(d)(3), the Court examines: (1) the egregiousness of violations, (2) the isolated or repeated nature of the violations, and (3) the degree of scienter involved. *SEC v. Brethen*, 1992 U.S. Dist. LEXIS 20665 at *104 (S.D. Ohio 1992); *See also SEC v. Deyon*, 977 F. Supp. 510, 519 (D. Me. 1997), *aff'd*, 201 F.3d 428 (1st Cir. 1998); *SEC v. Custable*, 1996 U.S. Dist. LEXIS 19321 at *13-14 (N.D. Ill. Dec.17, 1996), *aff'd*, 132 F.3d 36 (7th Cir. 1997). Where the defendants' conduct involves fraud and deliberate disregard of the federal securities laws and resulted in substantial losses, the Court is authorized to impose a third tier civil money penalty of the greater of \$120,000 per violation or the amount of benefit the defendants received from their fraudulent activity. Section 20(d)(2) of the Securities Act, 15 U.S.C. §77t(d)(2), Section 21(d)(3) of the Exchange Act, 15 U.S.C. §78u(d)(3), and 17 C.F.R. § 201.1002). In this case, there were at least one hundred separate investors representing at least one hundred instances of separate fraudulent misrepresentations. Each investor, therefore, represents at least one separate violation of the federal securities laws. Thus, the maximum penalty in this case could exceed \$12 million per defendant. *See, SEC v. Kenton Capital, Ltd.*, 64 F. Supp. 2d 1 (D.D.C. 1998) (\$1.2 million penalty based on twelve defrauded investors); *SEC v. Milan Capital Group, Inc.*, 2001 U.S. Dist. LEXIS 11804 (S.D.N.Y. 2001) (\$10 million penalty for offering fraud).

2. In this case in which the defendants' conduct involved fraud and deliberate disregard of the federal securities laws and resulted in substantial losses, the Court has concluded that the amount requested by the Commission, that each defendant pay a \$1 million civil money penalty, is appropriate. The individual defendants are relatively young and capable of earning a

sufficient living to pay a portion of their future income towards disgorgement and civil money penalties. A civil penalty of this amount will impose a sufficient deterrence to them and other persons who may be tempted to commit fraud in the future. As this Court has already found, the defendants are repeat offenders, which justifies the imposition of a substantial civil money penalty.

THEREFORE,

I.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT defendant Gary L. Moody shall pay a civil money penalty of \$1 million, and that defendant Steven R. Moody shall pay a civil money penalty of \$1 million.

II.

IT IS FURTHER ORDERED THAT in order to satisfy this Order to pay civil money penalties defendants Gary L. Moody and Steven R. Moody each shall deliver a check to the Court's registry in the amount of \$1 million drawn to the order of "CLERK, UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH." The check should bear on its face the caption "SEC V. MOODY ET AL., CIVIL NO. 2:02CV-110B (D.C. UTAH)" and be transmitted to the Clerk under cover of a letter to the Office of the Clerk, United States District Court for the District of Utah, U.S. Courthouse, 350 South Main Street, Salt Lake City, which identifies that it is the amount that has been ordered to be paid as civil money penalties in this action, and the caption and case number of this action. Copies of the check and accompanying cover letter shall be transmitted to counsel for the Commission, Kenneth J. Guido, Esq., Assistant Chief Litigation Counsel, 450 Fifth Street, N.W., Washington, D.C. 20549-0911.

III.

IT IS FURTHER ORDERED THAT the Clerk of this Court, or the Financial Deputy Clerk, is hereby directed to deposit said checks referred to above into an interest bearing account (the "Account") with a federally insured depository institution. The Account shall be held by the federally insured depository institution until further order of the Court, and shall thereafter be distributed pursuant to a plan for disposition of disgorgement funds, to be filed by the SEC with the Court, but in no event shall any of the funds paid into the Registry of the Court revert, directly or indirectly, to Defendants, their successors or assigns.

IV.

IT IS FURTHER ORDERED that interest earned on the Account shall be credited to the Account and shall thereafter be treated in the same manner as the principal.

V.

IT IS FURTHER ORDERED THAT the Commission will thereafter submit for the Court's consideration a proposed order for the disposition of such civil money penalties.

VI.

IT IS FURTHER ORDERED THAT there being no just cause for delay, the Clerk of the Court is directed, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, to enter this Final Judgment against defendants forthwith and without further notice.

SO ORDERED.

Dated:

Mar. 6, 2003


UNITED STATES DISTRICT JUDGE

jmo

United States District Court
for the
District of Utah
March 10, 2003

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:02-cv-00110

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

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