

**IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

---

**SECURITIES AND EXCHANGE  
COMMISSION,**

Plaintiff,

vs.

**UNLIMITED CASH, INC.,  
DOUGLAS NETWORK ENTERPRISES,  
WAYNE DOUGLAS FLESHER,  
NANCY CAROL KHALIAL,  
SNEED FINANCIAL SERVICE, LLC., and  
CLIFTON CURTIS SNEED, Jr.,**

Defendants.

---

Civil Action No.  
3:06-cv-0594-K  
ECF

**ORDER OF DISGORGEMENT, PREJUDGMENT INTEREST, THIRD TIER CIVIL  
PENALTIES, AND FINAL JUDGMENT AS TO UCI DEFENDANTS**

This matter came before the Court on the motion of the Plaintiff, Securities and Exchange Commission (“Commission”), for Order of Disgorgement, Prejudgment Interest, and Third Tier Civil Penalties Against Defendants Unlimited Cash, Inc. (“UCI”), Douglas Network Enterprises (“DNE”), Wayne Douglas Flesher, and Nancy Carol Khalial (collectively, the “UCI Defendants”) (“the Motion”). Based on all the files, records, and proceedings herein, and the arguments of the parties, the Court is of the opinion that the Commission’s motion should be GRANTED.

Pursuant to FED. R. CIV. PRO. 52(a), the Court enters the Findings of Fact and Conclusions of Law set forth below.

### **FINDINGS OF FACT**

1. Between April 2001 until at least May 2005, Flesher and Khalial, through UCI and DNE, their respective companies, raised approximately \$27,642,091.14 from hundreds of investors nationwide by fraudulently offering and selling the Ad Topper investments.

2. Flesher and Khalial lured investors by representing that, among other things, the Ad Topper investment would provide at least 16% annual returns, generated from DNE's sale of advertising on the Ad Topper machines. Flesher and Khalial further represented that, after three years, investors could recoup their original Ad Topper investment by selling the machines to DNE for the original purchase price. These representations, among others, were false.

3. In truth, the Ad Topper investment was a Ponzi scheme, with virtually all "returns" to investors coming from new investor funds, not from advertising sales. DNE generated only minimal advertising revenue.

4. Flesher and Khalial failed to tell investors that many Ad Toppers never were placed in the promised locations; that the same machine was "sold" to multiple investors at the same time; and that UCI had filed for bankruptcy protection during the offering.

5. Additionally, the UCI Defendants did not disclose to investors that sales agents received commissions ranging from 16% to 23%.

6. Like all Ponzi schemes, this one ultimately collapsed once new investor funds dried up. The UCI Defendants stopped paying investors in approximately May 2005.

7. Nevertheless, the UCI Defendants continued to lie to investors, first telling them that the sudden cessation of payments was due to a computer glitch and then claiming that a complete buyout of the program by a mysterious angel investor—who supposedly would pay investors a handsome premium—was imminent. When that failed to materialize, the UCI Defendants assured anxious investors that a second buyout was in the works, and would be

completed with the blessing of the SEC. These representations were also materially false and misleading.

8. According to the Commission's accounting of investor funds based upon bank records and documents provided by the defendants in this matter, during their scheme, the UCI Defendants received \$19,457,858.04 in ill-gotten profits.

9. Throughout the fraudulent scheme, the UCI Defendants jointly participated in ill-gotten profits received from investors. The Defendants commingled investor funds in bank accounts held at Santa Barbara Bank & Trust and collectively spent the funds as one economic unit.

10. The UCI Defendants consented to the entry of permanent injunctions against them, which precludes the Defendants from arguing that they did not violate the federal securities laws in the manner set out in the Commission's Complaint. The only remaining issue before the Court as to the UCI Defendants is the determination of the appropriate amount of monetary relief to be imposed.

### **CONCLUSIONS OF LAW**

11. The district court has broad discretion not only in determining whether or not to order disgorgement but also in calculating the amount to be disgorged. Disgorgement need only be a reasonable approximation of profits causally connected to the violation. Once the Commission presents evidence reasonably approximating the amount of ill-gotten gains, the burden of proof shifts to the defendant.

12. In determining an approximate amount of ill-gotten profits, the risk of uncertainty should fall on the wrongdoer whose illegal conduct created the uncertainty. Doubts are to be resolved against the defrauding party.

13. Where two or more individuals or entities collaborate or have a close relationship in

engaging in the violations of the securities laws, they may be held jointly and severally liable for the disgorgement of illegally obtained proceeds.

14. A securities law violator cannot diminish his responsibility to return illegal profits by claiming he no longer possesses the funds due. A defendant's claim that his profits were wiped out by subsequent losses is no defense to disgorgement. Securities law violators may not offset their disgorgement liability with business expenses. The manner in which violator chose to spend his misappropriations is irrelevant as to his objection to disgorge.

15. An award of pre-judgment interest in a case involving violations of the federal securities laws rests within the equitable discretion of the district court to be exercised according to considerations of fairness. Where a securities law violator has enjoyed access to funds over a period of time as a result of his or her wrongdoing, requiring the wrongdoer to pay prejudgment interest is consistent with the equitable purpose of the remedy of disgorgement.

16. The IRS underpayment of federal income tax rate as set forth in 26 U.S.C. § 6621(a)(2) is appropriate for calculating prejudgment interest in SEC enforcement actions such as this one. That rate of interest reflects what it would have cost to borrow the money from the government and therefore reasonably approximates one of the benefits the defendant derived from its fraud.

17. The appropriate amount of disgorgement to be assessed against the UCI Defendants is the total amount of illicit profits or ill-gotten gains they received from their fraudulent scheme.

18. An order for disgorgement and pre-judgment interest against the UCI Defendants is proper because they violated the federal securities laws. Throughout their fraudulent scheme, the UCI Defendants jointly violated the antifraud and securities registration provisions of the federal securities laws. The UCI Defendants have each consented to the respective Orders of Permanent Injunction entered by this Court, which precludes the Defendants from arguing that they did not

violate the federal securities laws in the manner set out in the Commission's Complaint. The appropriate amount of disgorgement to be assessed against the UCI Defendants is the total amount of illicit profits or ill-gotten gains they received from their fraudulent scheme.

19. The UCI Defendants are to be held jointly and severally liable for the full \$19,457,858.04 that was not returned to investors because they acted in concert as one economic unit.

20. Third tier penalties pursuant to Section 20(d) of the Securities Act [5 U.S.C. § 77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)] are proper if the violation involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement and directly or indirectly resulted in substantial losses or created a significant risk of substantial loss to other persons.

21. The amount of the third tier penalty for each violation is limited to the greater of \$120,000 for a natural person or \$600,000 for any other person (per the inflation adjustment specified by 17 C.F.R. § 201.1002), *or* the gross amount of pecuniary gain to such defendant as a result of the violation.

22. In this case, by operating a Ponzi scheme from at least April 2001 to May 2005 that defrauded hundreds of investors, the UCI Defendants clearly engaged in fraud and deceit in violation of the federal securities laws. The UCI Defendants blatantly misrepresented to the investors the manner in which their funds were used. Because of their fraudulent conduct, the UCI Defendants directly caused substantial losses to hundreds of investors. Therefore, third tier civil penalties are appropriate.

Based on the foregoing Findings of Fact and Conclusions of Law:

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendants UCI, DNE, Flesher, and Khalial, are jointly and severally liable for disgorgement of \$19,457,858.04, representing profits gained as a result of the conduct alleged in the Complaint of the Commission, together with prejudgment interest in the amount of \$2,107,249.54, for a total of \$21,565,107.58. In addition, pursuant to Section 20(d) of the Securities Act of 1933 [15 U.S.C. §77t(d)] and Section 21(d)(3) of the Securities Exchange Act of 1934 [15 U.S.C. § 78u(d)(3)]: Defendant UCI is liable for a third tier civil penalty in the amount of \$120,000.00; Defendant DNE is liable for a third tier civil penalty in the amount of \$120,000.00; Defendant Flesher is liable for a third tier civil penalty in the amount of \$120,000.00; and Defendant Khalial is liable for a third tier civil penalty in the amount of \$120,000.00. The Commission may enforce the Court's judgment for disgorgement and prejudgment interest by moving for civil contempt (and/or through other collection procedures authorized by law) at any time after ten days following the entry of this Judgment. In response to any such civil contempt motion by the Commission, Defendants may assert any legally permissible defense. Defendants shall satisfy this obligation by making full payment within ten days of the issuance of this Judgment by certified check, bank cashier's check, or United States postal money order payable to the Securities and Exchange Commission. The payment(s) shall be delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Mail Stop 0-3, Alexandria, Virginia 22312, and shall be accompanied by a letter identifying UCI, DNE, Flesher, and Khalial as defendants 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 this Judgment. The UCI Defendants shall simultaneously transmit photocopies of such payment and letter to the Commission's counsel in this action. By making this payment, UCI Defendants relinquish all legal and equitable right,

title, and interest in such funds, and no part of the funds shall be returned to the UCI Defendants. Defendants shall pay post-judgment interest on any delinquent amounts pursuant to 28 U.S.C. § 1961. The Commission shall remit the funds paid pursuant to this paragraph to the United States Treasury.

II.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Order.

SO ORDERED this 3<sup>rd</sup> day of August, 2007.

A handwritten signature in dark ink, reading "Ed Kinkeade", written in a cursive style. The signature is positioned above a horizontal line.

ED KINKEADE  
UNITED STATES DISTRICT JUDGE