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DISTRICT OF UTAH
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U.S. DISTRICT COURT

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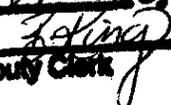
UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

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,

Entered on docket
10-24-02 by:

Deputy Clerk

Defendants.

~~UNRECORDED~~ ORDER GRANTING PLAINTIFF SECURITIES AND
EXCHANGE COMMISSION'S MOTION FOR SUMMARY JUDGMENT

The Plaintiff Securities and Exchange Commission ("Commission"), pursuant to Rule 56, Fed. R. Civ. Proc., and Local Rule DUCivR 56-1, has moved this Court to grant a motion for a preliminary injunction: (1) prohibiting defendants Virtual Private

69

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.

It appearing to this Court that the Commission, having duly commenced this action by filing its Complaint for Permanent Injunction and Other Equitable Relief (the “Complaint”), the defendants having not filed an answer to the Complaint; the Commission having moved this Court for an Order granting summary judgment and a permanent injunction against defendants; the Court having jurisdiction over the parties and the subject matter of this action, the Court being fully advised in the premises, and there being no just reason for delay,

THE COURT HEREBY FINDS AS FOLLOWS:

FINDINGS OF FACT

A. Facts Establishing Liability

1. This matter involves an ongoing scheme that started sometime in 2001.

The scheme was known as the Virtual Private Marketplace and consisted of three programs, the Real Value Coupon Exchange, the Luxury Transport Project, and the Many Mansions Program. Gary L. Moody Depo. (April 24, 2002), Exs. 3 and 4 (“G. Moody Depo.”); Steven R. Moody Depo. (April 25, 2002), Exs. 3 and 4 (S. Moody Depo.D”); Lorra Reinhard Depo., pp. 25, 29, (June 27, 2002) (“Reinhard Depo.”); Kelly Lindsey Decl. ¶ 2 (“Lindsey Decl.”); Erika Erickson Decl. ¶ 2 (“Erickson Decl.”); David Hansen Decl. ¶ 3 (“Hansen Decl.”); Randy Will Decl. ¶ 2 (“Will Decl.”).

2. The Defendants promised investors if they participated in these programs they would receive astronomical returns that will be generated from the defendants' efforts and unique system. G. Moody Depo., pp. 13-15, and Exs. 4 and 5; S. Moody Depo., pp. 51-53, and Exs. 4 and 5"); David Hansen Decl. ¶ 3 ("Hansen Decl."); Randy Will Decl. ¶ 2 ("Will Decl."); Reinhard Depo., pp. 16-18; Lindsey Decl. ¶ 3; Erickson Decl. ¶ 3.

3. In the course of marketing their program, defendants have told investors that their investment will double after four to eight weeks, and others have been told that their investment will double weekly, every week. Call Depo., pp. 25-26; Reinhard Depo., pp. 16-18, 20-21, 54-56, and Ex. 4; Lindsey Decl. ¶ 3 and 5; Erickson Decl. ¶ 3; Hansen Decl. ¶ 6; Will Decl. ¶ 3; Welter Decl. ¶¶ 3-4. The defendants represented that at the end of the requisite time period, investors could either leave their investment in the program to double again, or redeem their original investment for "coupons." Call Depo., pp. 25-26; Reinhard Depo., p. 37; Lindsey Decl. ¶ 3; Erickson Decl. ¶ 3; Hansen Decl. ¶ 7; Welter Decl. ¶¶ 5, 12, 14, 23, 24, and 26. Investors were told that these rates of return were possible because of the unique nature of the program, and the defendants' investment skills. Call Depo., pp. 35-36; Reinhard Depo., pp. 37-39, and Ex. 5; Lindsey Decl. ¶ 3; Erickson Decl. ¶ 3; Welter Decl. ¶¶ 4 and 26.¹ The defendants also represented

¹ The written materials provided to investors offer similar information and purport to show how it is possible for the VPM program to provide such exorbitant returns to investors. For example, one document entitled "VPM – IVCZone Memo dated November 13, 2001" states as follows:

We guarantee double coupons on all orders. Geometric growth is an addition and a privilege by performance. The programs were originally offered to the new and old members as part of phase I testing, as an incentive boost to there [sic] buying power. We are now in phase II testing, where more the [sic] financial systems will be revealed.

Welter Decl. ¶ 25, Ex. H.

Another document entitled "Virtual Private Marketplace, Summary Letter" also attempts to explain how defendants' system will generate a profit for investors:

to investors that by pooling the investors' funds they will have millions of dollars to invest and therefore can obtain a higher rate of return on the investors' funds. Welter Decl. ¶ 14.

4. The investors did not receive the returns that the defendants promised. Call Depo., pp. 40-48; Reinhard Depo., pp. 30-32 and 46; Lindsey Decl. ¶ 9; Erickson Decl. ¶ 8; Will Decl. ¶ 5-8; Hansen Decl. ¶ 9. Moreover, when some investors sought their funds back, they received checks that did not clear for lack of sufficient funds. Welter Decl. ¶¶ 29-30. Other investors never received the benefits they were promised, and applied for, because there were no funds to satisfy their claims. Call Depo., p. 44-45; Lindsay Decl. ¶ 9; Reinhard Depo., pp. 30-33; Erickson Decl. ¶ 12; Will Decl. ¶ 9. Nevertheless, the defendants continued to represent that the scheme would generate astronomical profits for investors. Welter Decl. ¶¶ 13, 19 and 30; Reinhard Depo., pp. 30-33; Erickson Decl. ¶ 12.

5. In addition to making false statements about the returns investors could expect to make, the defendants misrepresented the Moody brothers' backgrounds and credentials. Welter Decl. II, ¶ 2, Ex. A (Transcript of Video Tape, pp. 11-16 ("Video Tape Tr.")). For example, the defendants represented that Steven Moody is licensed as a Certified Public Accountant. Call Depo., p. 54-55; Reinhard Depo., p. 66; Erickson Decl. ¶ 5; Video Tape Tr., p. 11. This representation is false--neither the California Board of Accounting nor Utah's state accounting board have a record that Steven Moody is a licensed Certified Public Accountant. Welter Decl. ¶¶ 5 and 27.

Our network is based on the paradigm of 'creative complication' and 'spending your way to wealth,' for the good of all advertisers and businesses we reach worldwide. These are real mindset shifts for prosperity, eCommerce, privacy and business freedom. . . . Success comes quickly as we complete each of many test labs.

Welter Decl. ¶ 25; Ex. H.

6. The defendants claimed that Gary Moody had a broad financial background and had worked in financial institutions both domestically and internationally. Reinhard Depo. pp. 66-67; Video Tape Tr. 9-10. The defendants represented that Gary Moody had or would receive four doctorate degrees from Harvard University for a thesis he has written explaining VPM's investment strategy. Video Tape Tr., pp. 9-11. These representations are also false. Neither Harvard University's Faculty of Arts & Sciences nor its Business School have any record of Gary Moody attending the University, much less receiving a degree. Welter Decl.¶¶ 5 and 27, Ex. J. Gary Moody has never held a position with a financial institution. Welter Decl.¶¶ 16 and 27, Ex. E.

7. The defendants represented that they have \$1 billion, and that VPM has a team of lawyers working for them at a cost of \$1 million per month. Video Tape Tr., p. 14; Welter Decl.¶ 5. Defendants also represented that they do not need any additional money and were promoting their scheme to help people. Video Tape Tr., pp. 14-15; Welter Decl.¶ 27. Neither of these representations was true. Welter Decl.¶ 27. The only funds to which the Moody brothers had access were the investors' funds on deposit in the bank accounts frozen in this action. *Id.* The defendants almost on a daily basis drew down the balances in the accounts, using the funds for their personal living expenses, including payment of wedding expenses, child support, food and clothing, and video rentals and purchases. Welter Decl. II ¶¶ 4-8, Exs. C-G (Bank Records); G. Moody Depo., pp. 48-52, and Exs. 30-34; S. Moody Depo., pp. 22-36, and Exs. 37-39. The only purported evidence of any wealth held by defendants are so-called gold certificates that have no value and are not backed by any gold or platinum on deposit anywhere. G. Moody Depo., pp. 16-19, and Exs. 6-7; S. Moody Depo., p. 78, and Ex. 48; Reinhard

Dep. Pp. 24 and 66; Hansen Decl. ¶ 2. There simply is no record that they have a net worth of \$1 billion as they represented to investors. Welter Decl.¶ 27. There is no evidence of a multitude of lawyers working for the defendants, much less evidence of lawyers who are being paid \$1 million per month. *Id.*

8. The simple fact is that the defendants are impecunious. G. Moody Dep. Pp. 21-30 and Exs.10-11; S. Moody Depo. pp. 5-13 and 17-19, and Exs. 10-11; Call Depo., p. 56. Steven Moody filed for personal bankruptcy in 2000 in order to protect himself from his creditors. Welter Decl.¶¶ 5 and 7. Gary Moody testified in a 1992 Commission investigation that he was in precarious financial condition. Specifically, he testified that he did not graduate from college and was instead “self-educated.” Between 1970 through 1975 he worked in construction, brick laying, clothing sales and fashion design. Between 1980 and 1990 he was a consultant to various companies who were seeking lenders or investors. Gary Moody conceded that he was “not successful at any time during that time [period]” in concluding any transactions for any companies. In fact, during the 1980’s, Gary Moody admitted that he worked part-time jobs in sales “just to survive.” In addition, from 1987 through 1992, he lived “on and off” with his mother. Welter Decl.¶¶ 16 and 27, Ex. E. Nevertheless, the defendants represented to investors that Gary Moody had fifteen years of financial experience, had run similar companies that had been successful, and had worked on the inside at banks, which were not true. Video Tape Tr., pp.9-10.

9. The defendants have also failed to disclose material facts to investors about their previous fraudulent activities. They failed to disclose to investors that in February of 1999 the Commission obtained a default judgment against Gary Moody

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, and have failed to disclose that he was convicted of a felony for the same scheme in New York and convicted for another securities fraud in the state of Utah. Welter Decl. ¶ 6. In addition, the defendants have failed to inform investors that defendant Steven R. Moody consented to be 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. Steve. R. Moody Depo., pp. 35-41, and Ex. 40.

B. Facts As To Remedies

10. As of January 23, 2002, the Virtual Private Marketplace Ltd. and the Billpay Systems, LLC bank accounts had received deposits of over \$700,000. Welter Decl. II ¶ 9. Based on the account records, those funds were withdrawn soon after they were deposited and were used primarily for the defendants' personal purposes. Welter Decl. ¶ 28; Welter Decl. II, ¶ 2, Exs. D-G ; G. Moody Depo., Ex. 11, fax. pp. 5 and 7; S. Moody Depo., Ex. 11, fax. pp. 5 and 7.

11. Moreover, during the several weeks prior to the issuance of the Temporary Freeze Order on February 7, 2002, investors who had tried to get their money bank received checks that failed to clear for lack of sufficient funds. Welter Decl. ¶¶ 29-30. In addition, one investor who has visited the office of VPM in Park City, Utah on approximately 15 occasions in the two weeks prior to the filing of the complaint in this action investors complained that they have not received the coupons they were promised. Welter Decl. ¶ 30. Another investor received an automobile that was repossessed by the dealer because of the defendants' failure to fully pay for the automobile as they had led

the investor to believe. Will Decl. ¶ 6-8. According to the manager of the Real Value Exchange Program, there were no funds left in the VPM program as early as December 2001 to purchase coupons ordered by investors to whom they had been promised. Call Depo. at pp.41-47.

12. 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 this motion for summary judgment is based. G. Moody Depo., pp. 1-68; S. Moody Depo., pp. 1-91.

13. 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.

CONCLUSIONS OF LAW

1. By reason of the foregoing, defendants, directly or indirectly, in connection with the purchase or sale of the securities of an issuer, by the use of means or instrumentality of interstate commerce, of the mails, and of any facility of any national securities exchange: (i) employed a device, scheme or artifice to defraud; (ii) made untrue statements of a material fact and omitted to state a material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and (iii) engaged in acts, practices, and courses of business which operated as a fraud or deceit upon other persons, in violation 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].

2. By reason of the foregoing, defendants, directly or indirectly, 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 the use of the mails: (1) employed devices, schemes, or artifices to defraud; (2) obtained money or property by means of untrue statements of a material fact and omissions to state a material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and (3) engaged in transactions, practices, and courses of business which operated as a fraud or deceit upon the purchasers in violation of Section 17(a) of the Securities Act [15 U.S.C. §77q(a)].

3. By reason of the foregoing, defendants, directly or indirectly, made use of the means or instruments of transportation or communication in interstate commerce or of the mails to offer and sell securities through the use or medium of a prospectus or otherwise when no registration statement has been filed or was in effect as to such securities and when

no exemption from registration was available in violation of Sections 5(a) and (c) of the Securities Act [15 U.S.C. §§ 77e (a) and (c)].

THEREFORE,

I.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Commission's Motion for Summary Judgment and Permanent Injunction Against Defendants is hereby granted.

II.

IT IS FURTHER ORDERED THAT, defendants VPM, Billpay, G. Moody, and S. Moody, and their officers, directors, subsidiaries, affiliates, agents, servants, employees, attorneys-in-fact, and those persons in active concert or participation with them who receive actual notice of this order by personal service or otherwise, and each of them, are enjoined and restrained from directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails or of any facility of any national securities exchange in connection with the purchase or sale of any security: (1) employing any device, scheme, or artifice to defraud; (2) making any untrue statement of a material fact or to omit 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 (3) 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 thereunder [17 C.F.R. 240.10b-5].

III.

IT IS FURTHER ORDERED THAT, defendants VPM, Billpay, G. Moody, and S. Moody, and their officers, directors, subsidiaries, affiliates, agents, servants, employees, attorneys-in-fact, and those persons in active concert or participation with them who receive actual notice of this order by personal service or otherwise, and each of them, are enjoined and restrained from, directly or indirectly, 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 the use of the mails: (1) employing any device, scheme, or artifice to defraud; or (2) obtaining money or property by means of any untrue statement of a material fact or any omission 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 (3) engaging in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser in violation of Section 17(a) of the Securities Act [15 U.S.C. §77q(a)].

IV.

IT IS FURTHER ORDERED THAT, defendants are enjoined from, directly or indirectly making use of the means or instruments of transportation or communication in interstate commerce or of the mails to offer and sell securities through the use or medium of a prospectus or otherwise when no registration statement is filed or is in effect as to such securities and when no exemption from registration is available in violation of Sections 5(a) and (c) of the Securities Act [15 U.S.C. §§ 77e (a) and (c)].

V.

IT IS FURTHER ORDERED THAT defendants pay disgorgement of profits gained and retained from the conduct alleged in the Complaint in the amount of \$ 713,328.44, plus pre-judgment interest of \$ 17,958.31.

VI.

IT IS FURTHER ORDERED THAT, in order to partially satisfy defendants' obligations to pay disgorgement and pre-judgment interest in this action, the banks that hold funds frozen by this Court's previous orders are directed to make available to the Clerk, United States District Court for the District of Utah, all of such funds.

VII.

IT IS FURTHER ORDER THAT financial institutions in which frozen funds are held shall deliver a check to Court's registry in the amount of funds on deposit with said financial institution 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 frozen by this Court 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.

VIII.

IT IS FURTHER ORDER THAT any person or entity who receives notice of this Order that holds assets of any kind shall notify the CLERK, UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH that such assets are being held by said person. If the assets in the form of cash on deposit with said person or entity, a check to the Court's registry in the amount of funds on deposit with said person or entity 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 frozen by this Court in this action, and the caption and case number of this action. Copies of the notice or 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.

IX.

IT IS FURTHER ORDERED THAT defendants relinquish all legal and equitable right, title, and interest in to frozen funds or assets, and no part of such funds or assets shall be returned to defendants or their successors or assigns. The Commission will thereafter submit for the Court's consideration proposed orders for disposition of such funds.

X.

IT IS FURTHER ORDERED THAT defendants shall pay the maximum third tier civil money penalty. The Commission will submit for the Court's consideration proposed orders setting forth the proper amount of civil money penalties each defendant shall pay and setting forth the proper disposition of such funds.

XI.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED 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:

Oct. 21, 2002


UNITED STATES DISTRICT JUDGE

blk

United States District Court
for the
District of Utah
October 24, 2002

* * 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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