

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

U.S. DISTRICT COURT OF TEXAS

FILED

JUL 10 1998

NANCY DOHERTY, CLERK

by

Deputy

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

AMERICAN AUTOMATION, INC., KENDYLL R.
HORTON, HAZEL A. HORTON and MERLE B.
GROSS

Defendants,

and

MUSCLEWEAR, INC., ANGEL WORLD INSURANCE:
GROUP, INC., LORD & KENDYLL INVESTMENTS,
INC., FAMILY LIGHT CO., LLC, and DIRECTION
MANAGEMENT CO., LLC

Defendants Solely for Purposes
of Equitable Relief.

CIVIL ACTION NO.

3 - 98 CV 1596 - D

COMPLAINT

Plaintiff, Securities and Exchange Commission, for its claims alleges that:

SUMMARY

1. Defendants American Automation, Inc. ("Automation" or "the company"), Kendyll R. Horton ("Horton"), Hazel A. Horton ("Hazel Horton") and Merle B. Gross ("Gross") have been and are engaged in a fraudulent offering of unregistered Automation common stock. Since April 1996, these defendants have raised at least \$3 million from over 450 investors in numerous states through their fraudulent offering, and their fraudulent sales activities are ongoing. All of the defendants' activities are

conducted, directly and indirectly, by use of the means and instrumentalities of interstate commerce, including the interstate wires and U.S. mail, and in violation of the securities registration and anti-fraud provisions of the federal securities laws.

2. Automation, a Texas corporation, is purportedly in the business of developing and installing “automated insurance vending machines” (“AIVMs” or “kiosks”). Through the efforts of Horton, Hazel Horton, and Gross, who are all principals and control persons of Automation, and others, the company has been, and is, selling its common stock under the false pretense that Automation is successfully engaged in the business of developing and installing AIVMs in selected public locations, including shopping malls, and providing AIVMs to legitimate insurance companies. The defendants have made, and are making, false, misleading and incomplete statements to investors regarding the company’s business prospects, its projected sales and profits, the estimated value and future marketability of its stock, and, most importantly, the individual defendants’ knowing misapplication of funds raised from investors through their fraudulent statements.

3. By engaging in the conduct detailed in this Complaint, Automation, Horton, Hazel Horton and Gross, directly or indirectly, singly or in concert, have engaged, and, unless enjoined and restrained, will again engage in transactions, acts, practices and courses of business that constitute violations of Sections 5(a) and (c) and 17(a) of the Securities Act of 1933 (“Securities Act”) [5 U.S.C. §§ 77e(a) and (c) and 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].

JURISDICTION

4. This Court has jurisdiction over this action, and venue properly lies within this district, pursuant to Section 20(d) and 22(a) of the Securities Act [15 U.S.C. § 77t(d) and § 77v(a)], and Sections 21(d), 21(e) and 27 of the Exchange Act [15 U.S.C. §§ 78u(d), 77u(e) and 78(aa)].

PARTIES AND RELIEF REQUESTED

DEFENDANTS

5. Automation is a Texas corporation with its principal place of business in Irving, Texas.

6. Horton, age 34, is a resident of Irving, Texas. He is the President of Automation and relief-defendants MuscleWear, Inc. ("MuscleWear"), Angel World Insurance Group, Inc. ("Angel World"), Lord & Kendyll Investments, Inc. ("L&K"), and is the sole member/manager of relief-defendant Direction Management Co., L.L.C. ("Direction"). Horton is the sole owner of MuscleWear, L&K and Direction. While Horton is not licensed to sell securities by any regulatory agency, he has twice taken, and failed, the test to become so-qualified.

7. Hazel Horton, 62, is a resident of Irving, Texas and is Horton's mother. Horton and Hazel Horton conduct the day-to-day business affairs of Automation, and the two of them alone have authority to direct and disburse funds raised for the company. Hazel Horton also exercises control over the activities of L&K, Angel World, MuscleWear, and Direction, and she is the President of relief-defendant Family Light, L.L.C. ("Family Light").

8. Gross, 57, is a resident of Dallas, Texas. Gross was a licensed securities salesman prior to April 1996, when he joined the Hortons' business to raise funds from investors. Gross is an officer of Automation, and conducts, and supervises others in soliciting potential investors.

RELIEF DEFENDANTS

9. MuscleWear is a Texas corporation owned by Horton, and operated by him and Hazel Horton from Automation's offices in Irving, Texas.

10. Angel World is a Texas corporation formed by Horton in 1997, to sell insurance policies through the Automation AIVMs; the company is not, however, registered or licensed to sell insurance. Angel World is operated by Horton and Hazel Horton from Automation's offices in Irving, Texas.

11. L&K is a Texas corporation acquired by Horton in May 1996. L&K was registered with the Commission as a broker-dealer by its prior owners, and Horton obtained the company to market Automation stock. In August 1997, L&K's registration as a broker-dealer was canceled by the Commission, and in February 1998, the company's corporate charter was revoked for failure to pay franchise taxes. Although legally defunct, L&K maintains offices with Automation, in Irving, Texas.

12. Family Light is a Texas limited liability company formed in July 1997. The company is controlled by Hazel Horton, and operated by her from Automation's offices in Irving, Texas.

13. Direction is a Texas limited liability company owned by Horton, and operated by him and Hazel Horton from Automation's offices in Irving, Texas. Horton is the sole member/manager of Direction.

14. Horton and Hazel Horton have diverted Automation's investors' funds to MuscleWear, Angel World, L&K, Family Light and Direction. The companies are named as relief-defendants to ensure both the Court's jurisdiction over the funds and assets misappropriated by the defendants, and its ability to grant complete relief.

**STATEMENT OF FACTS AND ALLEGATIONS
RELEVANT TO ALL CAUSES OF ACTION**

Offer and Sale of the Automation Securities

15. Horton, Hazel Horton, Gross and other Automation employees have been and are using commercially obtained "lead lists" to identify and contact investors by telephone from the Automation offices. They offer and sell Automation common stock to investors for \$1 per share, and all the defendants and at least nine sales agents -- none of whom are registered as brokers or dealers -- are all paid commissions ranging upwards from 6% of investors' contributions upon the sale of these securities. All of the activities described herein occurred during the period from April 1996 to and including the present; these activities are, and have been, conducted by the individual defendants directly and indirectly, through their use of employees or sales agents.

16. After an initial telephone solicitation, Automation sends prospective investors an offering packet prepared by, or at the direction of, all the individual defendants, that includes a business summary of Automation and its projections regarding sales and profits from the AIVMs. Some investors have also received a draft

of Automation's business plan, which contains false capitalization information and unreasonable pro forma income statements. After receipt of the offering packet, investors receive a "closing" telephone solicitation, often from Horton or Gross, touting Automation's business, and promising a "ground floor" opportunity.

17. In these telephone solicitations, and in the offering materials, the defendants represent that Automation has contracted with an unnamed "major regional insurance company" to place AIVMs in prime locations, including car dealerships and shopping malls, and that investors' funds will be used to finalize development of the kiosks and further market Automation's business. Investors are also told that Automation will be profitable in 1998, with \$29 million in profits on \$42.5 million in sales, and will grow its business in 1999 to \$121 million in sales (\$99 million in profits). Investors are told that Automation will conduct a public offering of its stock within a few months, after which the shares of Automation stock will be worth \$19 - \$20 per share, and publicly tradable.

18. In reality, Automation has never sold or leased an AIVM, or entered into any agreements for placement of the kiosks. Indeed, the company does not have a realistic business plan for the development or employment of its unproven AIVM technology. Automation's only revenues are investors' funds, and the company has no income from operations. Automation has taken no steps to initiate a public stock offering. And, most importantly, the individual defendants have diverted investors' funds for their personal uses and to pay expenses of other companies controlled by Horton and Hazel Horton, including, specifically, relief-defendants MuscleWear, Angel World, L&K,

Family Light, and Direction for purposes unrelated to Automation's business. Upon information and belief, Defendants diverted at least \$1 million in investors' funds to the relief-defendants, and at least \$500,000 to their own purposes, including for expensive automobiles, antique furniture, credit card billings, and other personal expenditures.

RELIEF REQUESTED

19. The Commission brings this action pursuant to authority conferred on it by Sections 20(b) and 20(d) of the Securities Act [15 U.S.C. §§ 77t(b) and 77t(d)] and Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)] to obtain relief from Automation, Horton, Hazel Horton, and Gross as follows:

a.) A temporary restraining order, and preliminary and permanent injunction to prohibit Automation, Horton, Hazel Horton and Gross from engaging in acts and practices in violation of the Securities Act and the Exchange Act, as alleged in this Complaint.

b.) An instanter order freezing assets owned or held by the defendants and relief defendants to safeguard such assets for the benefit of customers or investors, and directing these defendants and relief defendants to provide a sworn accounting detailing the receipt and disbursement of funds obtained from Automation investors.

c.) An order appointing a receiver pendente lite for the defendants and relief-defendants, and authorizing the receiver to, among other things, marshal and hold funds and assets received or obtained by the defendants and others from the proceeds of the fraudulent scheme set out herein.

d.) An order directing the defendants and relief-defendants to disgorge any gains from the illegal activities described in this Complaint, and directing them to pay prejudgment interest on any disgorged amounts, and directing the defendants to to pay civil money penalties.

FIRST CLAIM

FRAUD IN CONNECTION WITH THE PURCHASE AND SALE OF SECURITIES

Violations 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

20. The allegations of paragraphs 1 through 18 of this Complaint are realleged and incorporated herein by reference as if set forth here verbatim.

21. Automation, Horton, Hazel Horton and Gross, individually and through others, directly and indirectly, have been using and, unless enjoined, will continue to use the means and instrumentalities of interstate commerce and the mails:

- a.) to employ devices, schemes and artifices to defraud;
- b.) to make untrue statements of material facts and omit 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.) to engage in acts, practices and courses of business which operate as a fraud and deceit upon purchasers, prospective purchasers and other persons, in connection with the purchase and sale of securities.

22. As a part of and in furtherance of the scheme, defendants, individually

and through others, prepared, disseminated, or used promotional materials, investor correspondence, and oral presentations, that contained false, misleading or incomplete statements of material facts and omitted to state material facts, including, but not limited to, those set out in paragraphs 17 and 18 above.

23. Automation, Horton, Hazel Horton and Gross, individually and through their direction of others, have intentionally, knowingly, or recklessly conducted the activities described in this claim. By reason of the foregoing, they have acted with requisite scienter, and have violated and, unless enjoined, will continue to violate the provisions 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].

SECOND CLAIM

FRAUD IN THE OFFER AND SALE OF SECURITIES

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

24. The allegations of Paragraphs 1 through 18 of this Complaint are realleged and incorporated herein by reference, as if set forth here verbatim.

25. Automation, Horton, Hazel Horton, and Gross, individually and through others, directly and indirectly, have, in the offer and sale of securities, used, and unless enjoined will continue to use, the means and instruments of transportation and communication in interstate commerce and the mails, directly and indirectly:

- a.) to employ devices, schemes or artifices to defraud;
- b.) to obtain money or property by means of untrue statements of material fact or omissions to state material fact necessary in order to make the

statements made, in the light of the circumstances under which they were made, not misleading; and

c.) to engage in transactions, practices or courses of business which operate or would operate as a fraud or deceit.

26. As part of and in furtherance of this scheme, Automation, Horton, Hazel Horton and Gross, individually and through others, prepared, disseminated or used written promotional materials, confirmations, investor correspondence, and oral presentations, that contained false, misleading or incomplete statements of material facts and omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, including, but not limited to, those statements and omissions set out in paragraphs 17 and 18.

27. By reason of the foregoing, Automation, Horton, Hazel Horton and Gross, individually and through their direction of others, have violated, and unless enjoined, will continue to violate Sections 17(a)(2) and (3) of the Securities Act [15 U.S.C. 77q(a)(2) and (3)]. Furthermore, they have intentionally, knowingly or recklessly engaged in the acts and practices described in this claim, and acted with requisite scienter, so that they have violated and, unless enjoined, will continue to violate Section 17(a)(1) of the Securities Act [15 U.S.C. 77q(a)(1)].

THIRD CLAIM

FAILURE TO REGISTER SECURITIES

Violations of Section 5(a) and 5(c) of the Securities Act

28. The allegations of Paragraphs 1 through 18 of this Complaint are realleged and incorporated herein by reference, as if set forth here verbatim.

29. Automation, Horton, Hazel Horton and Gross, directly or indirectly, singly and in concert with others, have been offering to sell, selling and delivering after sale, certain securities, and have been, directly and indirectly: (a) making use of the means and instruments of transportation and communication in interstate commerce and of the mails to sell securities, through the use of written contracts, offering documents and otherwise; (b) carrying and causing to be carried through the mails and in interstate commerce by the means and instruments of transportation, such securities for the purpose of sale and for delivery after sale; and (c) making use of the means or instruments of transportation and communication in interstate commerce and of the mails to offer to sell such securities.

30. As described in paragraphs 1 through 18, defendants offered and sold Automation's securities to the public through a general solicitation of investors by use of the means and instrumentalities of interstate commerce. No registration statements have been filed with the Commission or are otherwise in effect with respect to these securities.

31. By reason of the foregoing, Automation, Horton, Hazel Horton and Gross have violated and, unless all are enjoined, will continue to violate Sections 5(a) and 5(c) of the Securities Act [15 U.S.C. 77e(a) and 77e(c)].

DEMAND FOR JUDGMENT

WHEREFORE, the Commission respectfully requests that this Court:

I.

Temporarily, preliminarily and permanently enjoin Automation, Horton, Hazel Horton and Gross from, directly or indirectly, violating Sections 5(a) and (c) 17(a) of the Securities Act and Section 10(b) of the Exchange Act, and Rule 10b-5 thereunder.

II.

Order instanter that Automation, Horton, Hazel Horton, Gross, MuscleWear, Angel World, L&K, Family Light and Direction make no payment or expenditure of funds, incur no additional liabilities, including draws on existing lines of credit or credit card charges, and effect no sale, gift, hypothecation or other disposition of any asset, in accordance with the application and order provided herewith, pending conclusion of this matter.

III.

Order instanter that Automation, Horton, Hazel Horton, Gross, MuscleWear, Angel World, L&K, Family Light and Direction each prepare and file with this Court a sworn accounting detailing the receipt and disbursement of all funds received from Automation investors by reason of the activities described in this Complaint, in accordance with the application and order provided herewith.

IV.

Order instanter that any bank, trust company, broker-dealer, credit card issuer or other depository institution holding accounts for or on behalf of Automation, Horton,

Hazel Horton or Gross make no transactions in securities (excepting liquidating transactions necessary to preserve wasting assets) and no disbursements of funds or securities, pending further order of this Court, in accordance with the application and order provided herewith.

V.

Order instanter that Automation, Horton, Hazel Horton and Gross not move, alter or destroy any of their books or records.

VI.

Order the appointment of a receiver pendente lite for Automation, Horton, Hazel Horton, Gross, MuscleWear, Angel World, L&K, Family Light and Direction for the benefit of Automation investors, to marshall, conserve, protect and hold funds and assets obtained by the defendants and their agents, co-conspirators and others involved in this scheme, wherever such assets may be found, or, with the approval of the Court, dispose of any wasting asset, in accordance with the application and proposed order provided herewith.

VII.

Order that the parties may commence discovery immediately, and that notice periods be shortened to permit the parties to require production of documents, or the deposition of any party or party-representative, on 72 hours notice.

VIII.

Order Automation, Horton, Hazel Horton, Gross, MuscleWear, Angel World, L&K, Family Light and Direction, to disgorge all illegal gains obtained as a result of the violative course of conduct alleged in this Complaint, and pay prejudgment interest on any such amount.

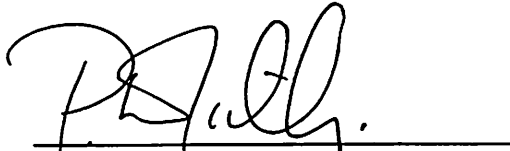
IX.

Order Automation, Horton, Hazel Horton and Gross to each pay a civil money penalty.

X.

Order such further relief as this Court may deem just and proper.

For the Commission, by its attorneys:



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