

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO.

SECURITIES AND EXCHANGE COMMISSION,)
)
)
Plaintiff,)
v.)
)
OWEN H. NACCARATO,)
)
)
Defendant.)
)

COMPLAINT

Plaintiff Securities and Exchange Commission alleges as follows:

INTRODUCTION

1. The Commission brings this action to enjoin Owen H. Naccarato, a California licensed attorney, from further violations of the registration provisions of the federal securities laws.

2. Global Digital Solutions, Inc. (“Global Digital”) engaged Naccarato to provide various securities related legal services. On two instances on September 18, 2013, Naccarato authored opinion letters recommending the removal of restrictive legends from stock certificates for Global Digital representing 2,000,000 shares. These letters inaccurately opined that Global Digital had never been a shell company, that certain shareholders were not affiliates of Global Digital, and that these shareholders’ proposed sales of Global Digital stock complied with the requirements of Rule 144 of the Securities Act of 1933 (“Securities Act”).

3. As a result, Naccarato instructed Global Digital’s transfer agent to remove the restrictive legends from these shareholder certificates, thus allowing the shares to become free trading and subsequently sold. But for the opinion letters, the transfer agent

would not have been allowed to issue the stock without a restrictive legend, and thereby facilitated their stock sale.

4. By reason of the foregoing, Naccarato violated Sections 5(a) and 5(c) of the Securities Act 15 U.S.C. § 77e(a) and 77e(c), and should be permanently enjoined from future violations of the registration provisions of the Securities Act.

DEFENDANT

5. Naccarato resides in Irvine, California. He is a corporate and securities attorney licensed to practice in the State of California and is the sole partner at Naccarato & Associates. Naccarato's law practice provides securities related services to companies, often assisting them with matters before the Commission and the Financial Industry Regulatory Authority (FINRA). He also has served in various corporate capacities for small public issuers.

RELATED PARTY

6. Global Digital is incorporated in New Jersey, with its principal place of business located in West Palm Beach, Florida. Global Digital purports to be in the "cyber arms manufacturing" and "security technology solutions" industry. Global Digital's common stock is registered with the Commission pursuant to Section 12(g) of the Securities Exchange Act of 1934 ("Exchange Act"). Its stock is quoted on the OTC Link marketplace for trading over-the- counter stocks operated by OTC Markets Group, Inc., under the ticker symbol "GDSI." Global Digital's stock is a "penny stock" under the federal securities laws. During the relevant time period, Global Digital operated out of a "virtual office" and had limited operations, no products, no sales, no revenues, and no assets outside of cash. On August 4, 2016, the Commission brought an action to enjoin Global Digital, its former Chairman and

CEO, and its former CFO from violating the anti-fraud and reporting provisions of the federal securities laws, and against the former Chairman and CEO and former CFO from violating the certification and filing provisions of the federal securities

JURISDICTION AND VENUE

7. The Court has jurisdiction over this action pursuant to Sections 20(b), 20(d)(1), 20(g), and 22(a) of the Securities Act, 15 U.S.C. §§ 77t(b), 77t(d)(1), 77t(g), and 77v(a).

8. The Court has personal jurisdiction over the Defendant, and venue is proper in the Southern District of Florida, because certain of the Defendant's acts and transactions constituting violations of the Securities Act occurred in the Southern District of Florida. Specifically, Naccarato directed documents and emails to individuals located in the District. In addition, at all relevant times, Global Digital engaged Naccarato as its attorney while having its principal place of business in the Southern District of Florida.

9. In connection with the conduct alleged in this Complaint, the Defendant, directly or indirectly, singly or in concert with others, made use of the means or instrumentalities of interstate commerce, the means or instruments of transportation or communication in interstate commerce, or the mails.

RULE 144 SAFE HARBOR

10. The Securities Act requires that if any person sells a non-exempt security to any other person, the sale must be registered with the Commission absent an applicable exemption.

11. Section 4(a)(1) of the Securities Act provides one such exemption for a transaction "by any person other than an issuer, underwriter, or dealer."

12. An “underwriter,” as defined in Section 2(a)(11) of the Securities Act, is any person who has purchased from an issuer with a view to, or offers or sells for an issuer in connection with, the distribution of any security, or participates, or has a direct or indirect participation in any such undertaking, or participates or has a participation in the direct or indirect underwriting of any such undertaking.

13. Rule 144 of the Securities Act creates a safe harbor from the Section 2(a)(11) definition of “underwriter.” A person satisfying the applicable conditions of the Rule 144 safe harbor is deemed not to be engaged in a distribution of the securities and therefore not an “underwriter” of the securities for purposes of Section 2(a)(11). Therefore, such a person is deemed not to be an underwriter when determining whether a sale is eligible for the Section 4(a)(1) exemption.

14. Under Rule 144(b)(1)(i), if the issuer of the securities is, and has been for a period of at least 90 days immediately before the sale, subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act, any person who is not an affiliate of the issuer at the time of the sale, and has not been an affiliate during the preceding three months, who sells restricted securities of the issuer for his or her own account shall be deemed not to be an “underwriter” of those securities within the meaning of Section 2(a)(11) of the Securities Act if all the conditions of certain other provisions in Rule 144 are met.

15. Thus, if a person is not deemed an “affiliate,” defined in Rule 144 as a person that directly, or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with, such issuer, then such person, consistent with the specifications of Rule 144(b)(1)(i), may sell unrestricted securities as that person is not deemed an “underwriter.”

16. Rule 144(i)(1)(ii) states that Rule 144 is not available to securities issued by an issuer that has been “at any time previously” a reporting or non-reporting shell company. Rule 405 of the Securities Act and Rule 12b-2 of the Exchange Act define “shell company” as a company with “[n]o or nominal operations” and either [n]o or nominal assets; [a]ssets consisting solely of cash and cash equivalents; or [a]ssets consisting of any amount of cash and cash equivalents and nominal other assets.”

17. No other exemption from Section 5 of the Securities Act existed for the sales of the Global Digital stock at issue in this Complaint.

DEFENDANT’S VIOLATIVE CONDUCT

18. On two occasions on September 18, 2013, Naccarato, engaged as Global Digital’s outside counsel during this time, failed to note that Global Digital was a shell company, and failed to note the affiliate status of the requesting shareholders, thus incorrectly deeming them eligible for unlegended shares. No registration statement was filed or in effect at the time Naccarato authored these opinion letters instructing Global Digital’s transfer agent to issue certificates without restrictive legends in these two instances. But for these opinion letters, Global Digital’s transfer agent would not have issued Global Digital stock certificates without restrictive legends, and the owner of these shares would not have been able to sell them.

A. Naccarato’s First Inaccurate Affiliate Designation

19. On September 18, 2013, Naccarato authored a Rule 144 safe harbor opinion letter removing the restrictive legend from 1,500,000 of Global Digital shares owned by Shareholder A, daughter of Executive X. However, Naccarato knew that Shareholder A was the daughter of Executive X (Global Digital’s then Executive Vice-President) and that the

shares had been gifted to her from her father. Despite this knowledge, Naccarato authored an opinion letter stating that she was a non-affiliate and complied with Rule 144's safe harbor provisions. Naccarato never spoke to Shareholder A directly. Executive X requested and paid for the letter. Days after Naccarato issued this opinion letter, Global Digital sold Shareholder A's freely transferable shares to raise additional capital for its operations. Global Digital subsequently issued additional Global Digital stock to Shareholder A to replace the shares sold.

B. Naccarato's Second Inaccurate Affiliate Designation

20. Also on September 18, 2013, Naccarato authored an opinion letter removing the restrictive legend from 500,000 of Global Digital shares owned by Shareholder B, the 19-year-old son of Executive Y at Global Digital. Naccarato knew Shareholder B was the son of Global Digital's CEO at the time, and that the stock had been gifted to him by his father. Despite this knowledge, and despite never having spoken to Shareholder B, Naccarato authored an opinion letter, which was virtually identical to the Shareholder A letter, stating that Shareholder B was a non-affiliate and complied with Rule 144's safe harbor provisions.

21. Days after Naccarato issued this opinion letter Global Digital sold Shareholder B's freely transferable shares to raise additional capital for its operations. Global Digital subsequently issued additional Global Digital stock to Shareholder B to replace the shares sold.

22. In his two opinion letters, Naccarato inaccurately concluded that the Global Digital shares could be issued without restrictive legends. Naccarato ignored red flags concerning the shareholders' likely affiliate status. The shareholders all controlled or were controlled by Global Digital and its senior executives. Finally, Global Digital was a shell

company within the meaning of Rule 144(i) because it operated out of a “virtual office,” had limited operations, no products, no sales, no revenues, and nominal assets (consisting solely of cash).

23. Global Digital raised \$495,000 from the sale of Shareholder A’s and Shareholder B’s freely transferable shares, as a result of the two inaccurate affiliate designations. At least one of the purchasers of the shares in this transaction sold the shares without an applicable exemption.

CLAIM FOR RELIEF

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

24. The Commission repeats and realleges Paragraphs 1 through 23 of this Complaint.

25. No registration statement was filed or in effect with the Commission pursuant to the Securities Act with respect to the securities and transactions described in this Complaint and no exemption from registration existed with respect to these securities and transactions.

26. On or about September 18, 2013 the Defendant, a substantial factor and necessary participant in the unregistered sale of Global Digital’s securities, directly and indirectly:

- (a) Made use of means or instruments of transportation or communication in interstate commerce or of the mails to sell securities as described herein, through the use or medium of a prospectus or otherwise;
- (b) Carried securities or caused such securities, as described herein, to be carried through the mails or in interstate commerce, by any means or instruments of transportation, for the purpose of sale or delivery after sale; or
- (c) Made use of means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell or offer to buy through the use or medium of a prospectus or otherwise, as described herein, without a registration statement having been filed or being in effect with the Commission as to such securities.

27. By reason of the foregoing, Naccarato violated and, unless enjoined, is reasonably likely to continue to violate, Sections 5(a) and 5(c) of the Securities Act, 15 U.S.C. § 77e(a) and 77e(c).

RELIEF REQUESTED

WHEREFORE, the Commission respectfully requests that the Court:

I.

Permanent Injunctive Relief

Issue a permanent injunction pursuant to Section 20(b) of the Securities Act, 15 U.S.C. §77t(b), restraining and enjoining Naccarato, his agents, servants, employees, attorneys, and all persons in active concert or participation with him, from directly or indirectly violating Sections 5(a) and 5(c) of the Securities Act, 15 U.S.C. §§ 77e(a) and 77e(c).

II.

Civil Penalties

Issue an Order directing Naccarato to pay a civil money penalty pursuant to Section 20(d) of the Securities Act, 15 U.S.C. § 77t(d).

III.

Disgorgement and Prejudgment Interest

Issue an Order directing Naccarato to disgorge all ill-gotten gains, including prejudgment interest, resulting from the acts or courses of conduct alleged in this Complaint.

IV.

Professional Legal Services Bar

Issue an Order barring Naccarato, for a period of five years, from directly or indirectly providing, or receiving compensation from the provision of, professional legal services to

any person or entity in connection with the offer or sale of securities pursuant to, or claiming, an exemption under Section 4(1) predicated on Securities Act Rule 144, or any other exemption from the registration provisions of the Securities Act, including, without limitation, participating in the preparation or issuance of any opinion letter related to such offering or sale.

V.

Further Relief

Grant such other further relief as may be necessary and appropriate.

VI.

Retention of Jurisdiction

Further, the Commission respectfully requests that the Court retain jurisdiction over this action in order to implement and carry out the terms of all orders and decrees that may be entered, or to entertain any suitable application or motion by the Commission for additional relief within the jurisdiction of this Court.

Respectfully submitted,

December 26, 2017

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