

FILED _____ LODGED _____
RECEIVED _____ COPY _____
NOV 19 2004
CLERK U S DISTRICT COURT
DISTRICT OF ARIZONA
BY _____ B DEPUTY

1 JULIE K. LUTZ (Cal. Bar No. 77296)
2 KURT L. GOTTSCHALL (Colo. Bar No. 028377)
3 Securities and Exchange Commission
4 1801 California Street, Suite 1500
5 Denver, Colorado 80202
6 Telephone: (303) 844-1000
7 Facsimile: (303) 844-1010

8 Attorneys for United States
9 Securities and Exchange Commission

10 UNITED STATES DISTRICT COURT
11 DISTRICT OF ARIZONA

12 SECURITIES AND EXCHANGE
13 COMMISSION,

14 Plaintiff,

15 v.

16 PAUL H. BRISTOW AND NIKHIL SINHA,

17 Defendants.

CIV'04 2601 PHX FJM

Docket Number:

COMPLAINT

18
19
20
21 Plaintiff Securities and Exchange Commission ("Commission") for its complaint alleges
22 as follows:
23
24
25
26

1 **I. SUMMARY OF THE ACTION**

2 1. In the second quarter of 2001, eFunds improperly recognized \$2.1 million in revenue
3 from a purported settlement payment by an affiliated entity, Access Cash International, L.L.C.
4 (“Access Cash”).

5 2. eFunds’ recognition of the settlement payment as revenue was not appropriate
6 because, among other things, eFunds agreed to reimburse Access Cash by paying future
7 consulting fees that would approximate the amount of the settlement payment.
8

9 3. Defendants Paul W. Bristow, eFunds’ former chief financial officer (“CFO”) and
10 Nikhil Sinha, eFunds’ former business enterprise group executive vice president, each reviewed
11 and approved the arrangement to repay the settlement payment to Access Cash.

12 4. eFunds’ improper revenue recognition for its transactions with Access Cash
13 overstated second quarter of 2001 revenue, inflated net income by 11 percent and enabled the
14 company to meet consensus analysts’ expectations for earnings for the quarter.

15 5. Defendant Bristow has engaged in, and unless restrained and enjoined by this Court
16 will engage in, transactions, acts, practices, and courses of business that violate Section 10(b) of
17 the Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. § 78j(b)] and Rule 10b-5
18 thereunder [17 C.F.R. § 240.10b-5].
19

20 6. Defendants Bristow and Sinha have engaged in, and unless restrained and enjoined by
21 this Court will engage in, transactions, acts, practices, and courses of business that violate
22 Section 13(b)(5) of the Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. §
23 78m(b)(5)] and Rule 13b2-1 thereunder [17 C.F.R. § 240.13b2-1].

24 7. Defendants Bristow and Sinha aided and abetted eFunds’ violations of Sections 13(a)
25 and 13(b)(2)(A) of the Exchange Act [15 U.S.C. §§ 78m(a) and 78(b)(2)(A)] and Rules 12b-20
26

1 and 13a-13 thereunder [17 C.F.R. §§ 240.12b-20, and 240.13a-13], and unless restrained and
2 enjoined by this Court, will continue to aid and abet violations of these provisions.

3 8. The Commission brings this action pursuant to the authority conferred upon it by
4 Sections 21(d) and (e) of the Exchange Act [15 U.S.C. §§ 78u(d) & (e)] for an order permanently
5 restraining and enjoining Defendants and granting other equitable relief.

6 **II. JURISDICTION AND VENUE**

7
8 9. This Court has jurisdiction over this action pursuant to Sections 21(e) and 27 of the
9 Exchange Act [15 U.S.C. §§ 78u(e) and 78aa].

10 10. In connection with the transactions, acts, practices, and courses of business described
11 in this Complaint, each of the defendants, directly and indirectly, has made use of the means or
12 instrumentalities of interstate commerce, of the mails, and/or of the means and instruments of
13 transportation or communication in interstate commerce.

14 11. Venue lies in this Court pursuant to Section 27 of the Exchange Act [15 U.S.C. §
15 78aa].

16 12. Certain of the transactions, acts, practices and courses of business constituting the
17 violations of law alleged herein occurred within this judicial district.

18 **III. DEFENDANTS**

19
20 13. Paul H. Bristow is a resident of Halliburton, Ontario, Canada. At times relevant to
21 the Commission's Complaint, Bristow was the chief financial officer and executive vice
22 president of eFunds Corporation. In his capacity as eFunds' chief financial officer, Bristow
23 prepared and signed eFunds' Form 10-Qs for the second and third quarters of 2001, including all
24 accompanying financial statements. Bristow was formerly licensed as a chartered accountant in
25
26

1 Ontario, Canada from approximately 1969 through 1971, when he allowed his registration to
2 lapse.

3 14. Nikhil Sinha is a resident of Austin, Texas. At times relevant to the Commission's
4 Complaint, Sinha was executive vice president of eFunds' business enterprise group. eFunds'
5 business enterprise group was primarily responsible for all product development and sales.

6 **IV. RELATED PARTIES**

7
8 15. eFunds Corporation is a Delaware corporation with its principal place of business in
9 Scottsdale, Arizona. eFunds processes electronic payments including debit card and ATM
10 transactions. eFunds' common stock is registered with the Commission pursuant to Section
11 12(b) of the Exchange Act, and began trading on the New York Stock Exchange ("NYSE") on
12 January 2, 2004. Before its listing on the NYSE, during the period of the conduct alleged in the
13 Commission's Complaint, eFunds traded on the NASDAQ National Market System.

14 16. Access Cash International, L.L.C. was a Delaware limited liability company, with its
15 principal place of business in Saint Paul, Minnesota. Access Cash was primarily in the business
16 of deploying and managing ATMs. Access Cash became a wholly owned subsidiary of eFunds
17 on October 10, 2001. Access Cash's securities were never listed on any exchange and the
18 company never filed periodic reports with the Commission.

19
20 17. ATM Holding, Inc., a Delaware corporation, was a holding company created and
21 owned by the founders of Access Cash in March 2000 to facilitate eFunds' purchase of a twenty-
22 four percent ownership interest in Access Cash. ATM Holding possessed no assets other than a
23 seventy-six percent ownership interest in Access Cash. On October 10, 2001, eFunds purchased
24 the remainder of Access Cash by purchasing ATM Holding. ATM Holding's securities were
25 never listed on any exchange and the company never filed periodic reports with the Commission.
26

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

V. FACTS

eFunds' Investment in Access Cash and Management Agreement

18. In March 2000, eFunds paid \$20 million to acquire approximately a 24 percent interest in Access Cash. eFunds purchased its stake in Access Cash with the view toward acquiring the remainder of the company.

19. Through its initial investment, eFunds obtained one seat on Access Cash's board of governors. eFunds did not play an active role in the management of Access Cash's operations.

20. On September 1, 2000, eFunds and Access Cash entered into a five-year management agreement ("Management Agreement") whereby eFunds took over responsibility for the strategy and placement of Access Cash's ATMs. Under the Management Agreement, eFunds received the processing revenue from Access Cash's ATMs, while in exchange, eFunds agreed to pay Access Cash a monthly management fee.

21. The management fee paid by eFunds, initially set at approximately \$5.2 million per month, was designed to approximate Access Cash's historical ATM revenues being assigned to eFunds.

22. eFunds recognized the ATM revenues assigned by Access Cash in its financial statements and recorded its management fees paid to Access Cash as expenses. Financial statements in eFunds' Form 10-K for the year ended December 31, 2000 included approximately \$20 million of revenue assigned by Access Cash pursuant to the Management Agreement.

The Amendment Agreement and Commitment Letter

23. From September 2000 through June 2001, eFunds and Access Cash disagreed as to the implementation of the Management Agreement. eFunds claimed that Access Cash was not following its ATM deployment instructions and that, as a result, ATM revenues received lagged

1 behind the management fees being paid by eFunds. Access Cash claimed that eFunds had
2 imposed burdensome ATM redeployment demands, and that any declines in ATM transactions
3 were seasonal in nature and known to eFunds prior to the Management Agreement.

4 24. On March 1, 2001, Access Cash exercised an option to terminate the Management
5 Agreement, effective September 1, 2001. eFunds challenged Access Cash's ability to terminate
6 the Management Agreement.

7 25. On June 11, 2001, eFunds reached a tentative agreement with ATM Holding that
8 eFunds would acquire the remaining 76 percent of Access Cash for approximately \$43 million.
9 Because eFunds was unable to complete the acquisition before the end of the second quarter,
10 eFunds, Access Cash and ATM Holding began negotiating agreements setting forth a timetable
11 for the acquisition and resolving disputes as to the Management Agreement.
12

13 26. In the last week of June 2001, Sinha negotiated directly with Access Cash and ATM
14 Holding, while circulating draft agreements to Bristow.

15 27. In the negotiations, Sinha proposed that Access Cash amend the Management
16 Agreement to: (1) modify its term to expire March 31, 2002; (2) expand its scope going forward
17 to include Access Cash's equipment sales in exchange for an additional management fee; and (3)
18 settle past disputes regarding the Management Agreement by Access Cash making a settlement
19 payment of approximately \$2.1 million. ("Amendment Agreement").
20

21 28. Under the proposed Amendment Agreement, Access Cash's settlement payment was
22 to be made by assigning to eFunds approximately \$2.1 million in equipment sale revenues that
23 Access Cash had earned in the second quarter of 2001.

24 29. Access Cash readily agreed to change the term of the Management Agreement and to
25 assign its equipment sale revenues going forward in exchange for an additional management fee.
26

1 However, Access Cash initially refused to assign its second quarter equipment sale revenues as a
2 settlement payment.

3 30. In order to obtain Access Cash's equipment revenues for the second quarter of 2001,
4 Bristow and Sinha agreed that eFunds would pay Access Cash an "additional sales assistance
5 consulting fee" of \$250,000 per month for the remaining nine-month term of the Management
6 Agreement.
7

8 31. Bristow and Sinha knew that unless eFunds' completed the purchase of the remainder
9 of Access Cash before March 31, 2002, the contemplated nine payments of \$250,000 under the
10 Amendment Agreement, totaling \$2.25 million, would approximate the \$2.1 million that Access
11 Cash assigned as the settlement payment in the second quarter of 2001. Bristow and Sinha also
12 knew that the Amendment Agreement did not require Access Cash to perform any specific
13 additional work to receive the additional consulting fee and that, under the terms of the
14 Amendment Agreement, eFunds was obligated to pay \$2.25 million, even if eFunds or Access
15 Cash terminated the Management Agreement early. Bristow and Sinha were reckless in
16 disregarding these facts when they caused eFunds to recognize the \$2.1 million Access Cash
17 settlement payment as revenue in the second quarter of 2001.
18

19 32. Also during the negotiations, Access Cash told Sinha and another eFunds executive
20 that they would not sign the proposed Amendment Agreement unless eFunds executed a separate
21 letter agreement with ATM Holding to either acquire the remainder of Access Cash for \$43
22 million by certain milestone dates or pay a penalty ("Commitment Letter").

23 33. On the last day of the second quarter, June 30, 2001, Access Cash's chief executive
24 officer signed the Amendment Agreement but refused to return the executed copy until eFunds
25 executed the Commitment Letter.
26

1 34. Sinha told Access Cash's chief executive officer that because Access Cash had
2 signed the Amendment Agreement on June 30, 2001, eFunds would finalize the Commitment
3 Letter within days.

4 35. On July 2, 2001, eFunds and ATM Holding signed the Commitment Letter, which,
5 among other things, provided that eFunds would pay ATM Holding a total of \$1.5 million on
6 various milestone dates through March 31, 2002 if eFunds failed to acquire the remainder of
7 Access Cash for \$43 million.

8 36. In its Form 10-Q filed for the second quarter of 2001, eFunds reported total revenue
9 of \$128.2 million for the quarter, including the \$2.1 million settlement payment made by Access
10 Cash under the Amendment Agreement.

11 37. eFunds' recognition of the \$2.1 million settlement payment made by Access Cash
12 under the Amendment Agreement as revenue enabled eFunds to meet analysts' consensus
13 earnings expectations for the second quarter of 2001.

14
15 **eFunds' Restatement Regarding Access Cash**

16 38. On March 4, 2002, eFunds announced a restatement of its financial statements
17 accompanying its Form 10-Qs for the second and third quarters of 2001. In its March 4, 2002
18 restatement, eFunds' determined that the Amendment Agreement and the Commitment Letter
19 were inter-dependent and should have been treated as one agreement that became effective in
20 July 2001. eFunds further determined that its recognition of revenue assigned to it by Access
21 Cash under the Amendment Agreement and recording of fees paid under the Amendment
22 Agreement and Commitment Letter as expenses, should have been accounted for as advances and
23 repayments regarding the acquisition of the remainder of Access Cash.
24
25
26

1 44. Bristow and Sinha circumvented or failed to implement a system of internal
2 accounting controls, falsified books, records, or accounts and directly or indirectly falsified or
3 caused to be falsified books, records or accounts described in Section 13(b)(2) of the Exchange
4 Act.

5 45. By reason of the foregoing, Bristow and Sinha violated, and unless restrained and
6 enjoined, will violate Section 13(b)(5) of the Exchange Act [15 U.S.C. § 78m(b)(5)] and Rule
7 13b2-1 thereunder [17 C.F.R. § 240.13b2-1].
8

9 **THIRD CLAIM FOR RELIEF**

10 **(Aiding and Abetting by Bristow and Sinha of eFunds' Violations of Section 13(a) of the**
11 **Exchange Act [15 U.S.C. § 78m(a)] and Rules 12b-20 and 13a-13 thereunder**
12 **[17 C.F.R. §§ 240.12b-20 and 240.13a-13])**

13 46. Paragraphs 1 through 39 are hereby realleged and incorporated by reference.

14 47. eFunds, an issuer of a security registered pursuant to Section 12(b) of the
15 Exchange Act, filed materially misleading annual and quarterly reports with the Commission.
16

17 48. By reason of the foregoing, eFunds violated Section 13(a) of the Exchange Act
18 [15 U.S.C. § 78m(a)] and Rules 12b-20 and 13a-13 thereunder [17 C.F.R. §§ 240.12b-20 and
19 240.13a-13].

20 49. Bristow and Sinha substantially assisted eFunds in committing violations of
21 Section 13(a) of the Exchange Act and Rules 12b-20 and 13a-13 thereunder.

22 50. By reason of the foregoing, Bristow and Sinha aided and abetted eFunds'
23 violations of Section 13(a) of the Exchange Act and Rules 12b-20 and 13a-13 thereunder, and
24 unless restrained and enjoined will continue to aid and abet violations of these provisions.
25
26

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

II.

Enter an Injunction, in a form consistent with Rule 65(d) of the Federal Rules of Civil Procedure, permanently restraining and enjoining each defendant, their subsidiaries, officers, directors, agents, servants, employees, and attorneys-in-fact, and all persons in active concert or participation with them, from violating, directly or indirectly, the provisions of law and rules alleged in this complaint.

III.

Order Defendants and their respective agents, servants, employees and attorneys to disgorge all ill-gotten gains received or benefits in any form derived from the illegal conduct alleged in this Complaint, together with pre-judgment and post-judgment interest as provided by law.

IV.

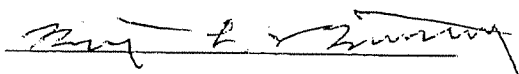
Order Defendants to pay civil penalties pursuant to Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)] in an amount to be determined by the Court.

V.

Grant such other relief as this Court may deem just or appropriate.

Dated: November 17, 2004

Respectfully submitted,



JULIE K. LUTZ
KURT L. GOTTSCHALL
Attorneys for Plaintiff
Securities and Exchange Commission