

STATE OF ARKANSAS
SECURITIES DEPARTMENT

IN THE MATTER OF

CEASE AND DESIST ORDER

ACE PAYDAY PLUS, LLC,
ACE PAYDAY MANAGEMENT, INC.,
JAMES L. BIANCO, MIKE MARINO,
MARSHALL CHILTON,
CHESTER I. POTASH,
WINDFALL VENTURES OF NEVIS, INC.,
JOE TAVAREZ
and ALL PERSONS
EMPLOYED BY OR OTHERWISE
AFFILIATED WITH THOSE
ENTITIES OR THOSE PERSONS

No. 02-13-S

CEASE AND DESIST ORDER

The Staff of the Arkansas Securities Department (the Staff) has received information and has in its possession certain evidence which indicates that ACE PAYDAY PLUS, LLC., ACE PAYDAY MANAGEMENT, INC., JAMES L. BIANCO, MIKE MARINO, MARSHALL CHILTON, CHESTER I. POTASH, WINDFALL VENTURES OF NEVIS, INC. and JOE TAVARES have violated provisions of the Arkansas Securities Act (the Act), codified at Ark. Code Ann. §§ 23-42-101, *et seq.* (Repl. 2000).

FINDINGS OF FACT

An ongoing investigation has revealed the following facts.

1. Ace Payday Plus, LLC, (Ace) is a limited liability company (LLC) formed under the laws of Florida on 22 May 2001. Its principal address is 633 N.E. 167th Street, Suite 619, North Miami Beach, Florida 33162.
2. Ace Payday Management, Inc. (Ace Management) is a corporation formed under the laws of Florida on 22 May 2001. Its principal address is 633 N.E. 167th Street, Suite 619, North Miami Beach, Florida 33162.
3. James L. Bianco (Bianco) is the president of Ace.

4. Mike Marino (Marino) is a sales person employed by Ace or by an independent sales office (ISO) which was employed by Ace.
5. Marshall Chilton (Chilton) is a sales person employed by Ace or by an ISO which was employed by Ace.
6. Chester I. Potash is a consultant and interim manager of Ace.
7. Windfall Ventures of Nevis, Inc. (Windfall) is the alternate name used by Windfall Ventures, Ltd., a corporation formed under the laws of the Federation of St. Kitts and Nevis, British West Indies on 12 October 1999. Registered to do business in Florida as a foreign corporation, its principal address there is 1995 East Oakland Boulevard, # 250, Oakland Park, Florida 33306.
8. Joe Tavarez (Tavarez) was a sales person employed by Windfall in its capacity as an ISO employed by Ace.
9. LITTLE ROCK RESIDENT: On or about 3 August 2001 a person who identified himself as Robert Huerta telephoned a resident of Little Rock, Arkansas (LR) and spoke to him briefly about an investment in Ace and caused a packet of written materials to be sent to LR on that date.

SALES LITERATURE AND PRINTED FORMS: In this packet were several documents of sales literature, a document entitled "Operating Agreement & Business Plan" of Ace, a document entitled "Subscription Documents & Questionnaire" for Ace and bank wire instructions. In these documents the following representations were made. The primary business of Ace would be check cashing and payday advances with a return of "up to 7% per week on every dollar." Among the services provided at Ace's stores were check cashing,

payday advances up to \$500, money orders, wire transfers, Western Union, traveler's checks and cellular telephones. "Chester Postash, PhD," is identified as the interim manager who will act as the LLC's interim manager and ongoing consultant until such time as the LLC is fully funded, at which time Ace Management will become the permanent manager. Ace Management was identified only as a "professional payday advance and check cashing Management Company," and no address was listed for it. Potash was touted as an expert in this field with 14 years' experience in South Florida. He is noted as having received a "double degree" from Pennsylvania State University, a bachelor of science and a "Bachelor of Fine Arts (BA) Degree," and a doctorate from the University of Pennsylvania. It is not stated in what fields of study Potash obtained these degrees. According to the Operating Agreement & Business Plan, Ace was offering 100 units or 80% of the ownership of the LLC through marketing representatives for \$10,000 each. The other 20% or 25 units were to be owned by the manager, Ace Management. The following was stated in the Operating Agreement & Business Plan:

The purchase of interests in the Company [Ace] is a passive investment. Members are not required to participate in the management of the company. Members do not maintain voting rights. Company [Ace] will be management managed.

Investors were promised 20% per annum simple interest, paid at a minimum of 5% quarterly, for a period of thirty-six (36) months or three years. Additional distributions of profits and return of the original investment would be paid at the end of each of the three fiscal years. Just what additional distributions there

might be and what was Ace's fiscal year were not stated. Potash was to be paid a fee of \$10,000, but Ace Management was to receive an ongoing management fee of 50% of gross profits.

FIRST TELEPHONE SOLICITATION: On 8 August 2001 Tavarez telephoned LR. Using the literature and printed forms in the packet, Tavarez attempted to induce LR to invest in Ace. He repeated most of what was found in the packet, but also virtually guaranteed the 20% per annum return, stating that he had never seen one of these "check cashing places" go under. Tavarez did not know in what field of study Potash's degrees were obtained. When asked if this investment was a security, Tavarez stated that it was not, but admitted that it was the investment of money with the expectation of receiving profits based on the efforts of other people. Tavarez said that he did not work for Ace, but for Windfall, which he said raised money for other companies and was acting as an agent for Ace raising money for it in this instance.

SECOND TELEPHONE SOLICITATION: On or about 19 September 2001 Chilton telephoned LR and attempted to persuade him to invest in Ace. Pursuant to this telephone conversation, Chilton faxed LR copies of several of the articles that were enclosed in the packet of printed materials and several other articles that purported to show the payday lending industry in a good light. Even though there was no provision for it in the Operating Agreement & Business Plan, Chilton assured LR that his money, were he to invest any, would be put into an escrow account and earmarked for the opening and operation of the four stores for which this offering was being made. He stated that the first of the four had been opened in Hollywood, Florida, and the other three would be open by

December, 2001. The Operating Agreement stated that the offering would close on 31 August 2001, unless extended by the manager, and there was no time limit placed on the period of time over which the offering could be extended. Although the offering had obviously been extended, Chilton said nothing about it.

10. NORTHWEST ARKANSAS RESIDENT. On or about 18 September 2001, a resident of northwestern Arkansas (NW) was contacted on behalf of Ace and/or an unidentified ISO and asked if he would be interested in receiving information about Ace with an eye toward investing in Ace. In several days a packet of printed materials identical to those sent to LR and described in ¶ 9, *supra*, arrived at NW's residence. Shortly after the arrival of this packet, Marino telephoned NW and solicited an investment. Marino told NW that he would be able to invest in this LLC with Ace and another one later. With the first LLC, NW would be entitled to 1) 20% interest per annum, 2) 50% of the net operating profits of the 4 stores that were to be opened by Ace and 3) all of his principal back at the end of three years. Investment in the first LLC was going to be more lucrative, Marino said, than an investment in subsequent LLC's because Ace would not pay investors 50% of the profits in subsequent LLC's. There was no printed or written information concerning this second LLC provided to NW. On 2 October 2001 NW made a \$10,000 investment in Ace, which was purported to be the first LLC.

PRE-IPO INDUCEMENT. Marino's sales presentation was identical to Tavarez's presentation to LR, but it contained an additional inducement that was not reduced to writing. At the end of the three years, Marino said, investors would be able to receive their principal investment back in cash or in the stock of Ace.

Those who had bought only one \$10,000 unit would be entitled to Ace stock at 50¢ per share. Those who bought more units would be entitled to buy stock at an even better price, depending on the units of the LLC purchased. For example, those who purchased two units would be entitled to stock at a ratio of 2 to 1 (25¢ per share), and those who had purchased three units would be entitled to stock at a ration of 3 to 1 (approximately 16.7¢ per share). After this time, Marino said, Ace would “go public” and make an initial public offering (IPO) of its stock at no less than \$5.00 per share, for which price NW could sell his shares. In January, 2002, NW received a \$500 interest payment on his first investment. Later in that same month, NW purchased three units of Ace Payday Plus II, LLC, purportedly a subsequent LLC, for \$30,000.

11. None of the respondents were registered with the Arkansas Securities Department (the Department) in any capacity.
12. A check of the records of the Department shows that no security issued by Ace is registered in accordance with the Act.
13. Neither Ace, nor Ace Management was registered to do business in Florida as a payday advance company, as required by Florida Statute § 560.401- 408.

CONCLUSIONS OF LAW

14. Ark. Code Ann. § 23-42-102(15)(A)(xi) (Repl. 2000) in pertinent part defines a security as an investment contract.
15. Ark. Code Ann. § 23-42-501 (Repl. 2000) provides that it is unlawful for any person to offer or sell any security which is not registered or which is not exempt from registration under the terms of the Act.

16. Ark. Code Ann. § 23-42-301(a) (Repl. 2000) prohibits as unlawful the transaction of business as a broker-dealer or agent by any person who is not registered with the Department as such.
17. Ark. Code Ann. § 23-42-102(2) (Repl. 2000) defines broker-dealer as any person engaged in the business of effecting transactions in securities for the account of others.
18. Ark. Code Ann. § 23-42-102(2)(A) (Supp. 1999) defines agent as, *inter alia*, an individual representing the issuer of securities or a broker-dealer and effecting or attempting to effect purchases or sales of those securities.
19. Ark. Code Ann. § 23-42-507(2) (Repl. 2000) provides that it is unlawful for any person in connection with the offer or sale of any security to make any untrue statement or omit to state a material fact necessary in order to make the statements made not misleading in light of the circumstances under which they are made.

OPINION

20. LR and NW were asked to make an investment represented by the Operating Agreement & Business Plan. According to this agreement, 1) the investor would and could play only a passive role and not be involved in the day-to-day operations of the enterprise into which he was asked to invest; 2) the investor had no expertise or experience in operating a payday loan or payday advance business and was dependent on Ace, Ace Management and Potash to manage and operate this business; and 3) because there was no limit on the number of investors nationwide, there were too many investors for any individual investors

to have any meaningful input into the management of these investments. The investors in Ace would be involved in a common enterprise with the expectation of profits to be produced only from the managerial efforts of others. Therefore, under established legal precedent the Operating Agreement & Business Plan is an investment contract and therefore a security as defined at Ark. Code Ann. § 23-42-102(15)(A)(xi) (Repl. 2000).

21. Because it caused the Operating Agreement & Business Plan to be drafted and marketed, Ace is the issuer of that investment contract in accordance with Ark. Code Ann. § 23-42-102(9) (Repl. 2000).
22. Windfall, attempting to effect transactions in securities in the account of others, acted as a broker-dealer in this transaction as defined at Ark. Code Ann. § 23-42-102(2) (Repl. 2000) without being registered with the Department as such, as required by Ark. Code Ann. § 23-42-301(a) (Repl. 2000).
23. Tavarez acted as an agent of a broker-dealer. Marino and Chilton acted either as agents of the issuer, or as agents of an unregistered broker-dealer, all without being registered, which was in violation of Ark. Code Ann. § 23-42-301(a) (Repl. 2000).
24. All the respondents offered to sell these investment contracts either through agents or as agents without prior registration of the investment contracts in violation of Ark. Code Ann. § 23-42-501 (Repl. 2000).

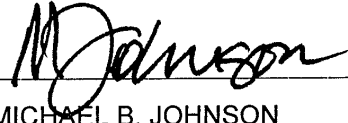
25. The failure to furnish objective, verifiable information or credible financial records supporting representations made in the printed materials accompanying the Operating Agreement & Business Plan that Ace earned a return of up to 7% per week on every dollar invested and that investors would make 20% interest per year was the omission of material facts in violation of Ark. Code Ann. § 23-42-507(2) (Repl. 2000).
26. The representations made in the printed materials accompanying the Operating Agreement & Business Plan that Ace was in the business of making payday advances or payday loans in Florida when neither it, nor Ace Management was licensed to engage in that business were untrue statements made in connection with the sale or offer of a security in violation of Ark. Code Ann. § 23-42-507(2) (Repl. 2000).
27. The intimation that Potash was an expert at this business because he had several degrees, including a doctorate, without revealing the course of study in which the doctorate was obtained was misleading and the omission of material facts in violation of Ark. Code Ann. § 23-42-507(1) and (2) (Repl. 2000).
28. Marino's statement to NW that an investment in the first Ace LLC would be more lucrative than an investment in subsequent Ace LLC's because Ace would not pay investors 50% of the net profits without furnishing objective, verifiable information or any written contracts or proposals concerning any subsequent LLC's was misleading and the omission of material facts in violation of Ark. Code Ann. § 23-42-507(1) and (2) (Repl. 2000).

29. Marino's statement that NW could make more money after the three year period of this investment was over by getting his principal back as stock in Ace for 50¢ to 16.7¢ per share, and then selling that stock for the opening price in Ace's initial public offering of stock at \$5.00 per share shortly thereafter, thereby making a tenfold to thirtyfold return on his principal was misleading and fraudulent as to the option to receive stock instead of principal, Ace being an LLC that does not issue stock, and the omission of material facts as to the possibility of a future IPO because there was no objective verifiable information provided NW showing that Ace would 1) change into a corporation and 2) make an IPO in violation of Ark. Code Ann. § 23-42-507(1) and (2) (Repl. 2000), respectively.

ORDER

IT IS THEREFORE ORDERED that ACE PAYDAY PLUS, LLC, ACE PAYDAY MANAGEMENT, INC., JAMES L. BIANCO, MIKE MARINO, MARSHALL CHILTON, CHESTER I. POTASH, WINDFALL VENTURES OF NEVIS, INC. and JOE TAVAREZ as well as others whose identities are not yet known who are in positions of control of ACE PAYDAY PLUS, LLC, PAYDAY MANAGEMENT, INC., or WINDFALL VENTURES OF NEVIS, INC. and who are employed by or otherwise affiliated with ACE PAYDAY PLUS, LLC, PAYDAY MANAGEMENT, INC., or WINDFALL VENTURES OF NEVIS, INC., directly or through other companies, **CEASE AND DESIST** from any further actions in the state of Arkansas in connection with the offer or sale of the securities described above and any other securities until such time as the securities are properly registered or shown to be exempt from registration pursuant to the Arkansas Securities Act and the persons offering them for sale are properly registered or shown to be exempt from registration pursuant to the Arkansas Securities Act.

WITNESS MY HAND AND SEAL this 5th day of April, 2002.

A handwritten signature in black ink, appearing to read "M. Johnson", is written over a horizontal line.

MICHAEL B. JOHNSON

ARKANSAS SECURITIES COMMISSIONER