

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
CIVIL DIVISION

A. HEATH ABSHURE,
ARKANSAS SECURITIES COMMISSIONER,

Plaintiff,

v.

LARRY WAYNE ZIEGLER (AKA ZIG ZIEGLER),
TROY DEE TRUVILLION, and
PHOENIX PERFORMANCE ENHANCEMENT GROUP,

Defendants

FILED 02/23/10 12:46:47
Pat O'Brien Pulaski Circuit Clerk
cr10 By _____

6th
60CV-10-933

CASE NO. CV2010-_____

COMPLAINT

COMES NOW the Plaintiff, A. Heath Abshure, Arkansas Securities Commissioner ("Commissioner"), and for his claims against the above named Defendants, states and alleges as follows:

JURISDICTION AND VENUE

1. The Commissioner brings this action pursuant to Ark. Code Ann. § 23-42-209, which permits the Commissioner to seek injunctive relief and relief ancillary to injunctive relief as may be appropriate in the public interest, including but not limited to obtaining an accounting, receivership, disgorgement, and the assessment of a fine. The Commissioner is the proper party to bring this action.
2. The Commissioner may bring actions for injunctive relief and ancillary relief in Pulaski County Circuit Court. See Ark. Code Ann. § 23-42-209(a)(3) and (b).
3. Defendants, in connection with their activities in the offer and sale of unregistered securities in and from Arkansas while being unregistered to do so by means of securities fraud, are subject to the provisions of the Arkansas Securities Act ("Act"), Ark. Code Ann. §§ 23-42-101 – 509. They

are therefore subject to the jurisdiction of this Court and to service of summons within or outside the state of Arkansas.

DEFENDANTS

4. Larry Wayne Ziegler, AKA Zig Ziegler, ("Ziegler") is an individual who resided in Scottsdale, Arizona before relocating to San Diego, California in June 2008.
5. Troy Dee Truvillion ("Truvillion") is an individual who resides in Chandler, Arizona.
6. Phoenix Performance Enhancement Group ("PPEG") is an Arizona limited liability company that was formed on December 12, 2003. PPEG's principal place of business is located in Scottsdale, Arizona. Ziegler serves the entity as the member-manager.

FACTS

7. From about December 2007 until November 2008, Ziegler and Truvillion offered and sold company stock in PPEG and TruSeven, Inc. ("Tru7") to at least one Arkansas person ("AR1").
8. AR1 met Ziegler at a health and fitness summit in Hot Springs, Arkansas, in the spring of 2007. Ziegler was a speaker at the summit. AR1 became aware that Ziegler owned PPEG.
9. In November 2007, a well-known personal trainer and fitness expert ("TP1") who was a friend to AR1 told AR1 that he had the "inside track" from Ziegler and that he was to receive \$250,000 and 900,000 shares of stock in PPEG for a percentage share of his business and his promoting PPEG to potential investors.
10. TP1 believed that PPEG was going to do a reverse merger in January 2008 and that PPEG stock would go public at that time. After talking with AR1, TP1 gave AR1's contact information to Ziegler.
11. Ziegler sent several emails to AR1 during November and December 2007, spoke to AR1 on the telephone and sent him a computerized presentation with information about PPEG. Ziegler also

provided AR1 with a PPEG Subscription Agreement that referred to a Private Placement Memorandum ("PPM"), but AR1 was never given a PPM.

12. In one of the telephone conversations between Ziegler and AR1, AR1 was told that the PPEG shares would "go public" in January 2008 at \$1.00 per share but that AR1 could buy shares at \$.50 per share.
13. In various emails from Ziegler, AR1 was told the following information:
 - a. AR1's stock would be free-trading as opposed to the insider's shares, the trading in which would be restricted through Rule 144, a SEC rule promulgated under the Securities Act of 1933.
 - b. The reverse merger company was a "completely virgin shell company that is a fully reporting company" with the SEC. No shareholder in the shell company would have any shares to "pump and dump."
 - c. PPEG's stock would slowly climb over the next 12 to 18 months to \$5.00 per share...anything faster would be a sign of a "pump and dump."
 - d. PPEG had solid deals and quarterly filings to "live up to."
 - e. Since he was a friend of TP1, Ziegler would buy AR1's stock back if he saw anything "funny" in the first ten days of trading but after that and AR1 would be "along for the ride."
 - f. Ziegler assured AR1 that AR1 would make a profit on his investment.
14. In another email, Ziegler pressured AR1 to invest before December 31, 2007, "in order for them to count as an investment in 2007. All the pre-merger deals have to be closed by then as well."
15. The computerized presentation received by AR1 from Ziegler represented the following about PPEG:

- a. PPEG "is the world's leading 3D motion capture service, software development and educational company."
 - b. PPEG owns 100% of Motion DNA TV and Media Productions on Fox Sports Network, a 33% interest in Virsys, Inc. – "a privately held corporation which has developed products and services utilizing motion capture for analyzing human movement, and equity stakes in JP Fitness, Granite Mountain Data Storage – both in Little Rock, Roundtripper Academy in Indianapolis, and Athletic Precision in Freehold, New Jersey."
 - c. PPEG's "revenues exceed \$3,000,000 annually. Assets of the company exceed \$15,000,000 in hardware, software, service contracts, and inventory."
16. On December 31, 2007, AR1 signed a subscription agreement to purchase 100,000 shares of PPEG for \$50,000. AR1 then caused \$50,000 to be wired to Wells Fargo Bank for the benefit of PPEG.
17. AR1 understood, through his conversations with Ziegler, that his investment money was to be used by PPEG to hire a management team, advertising costs, and capital. He also understood that some of the funds would go toward developing the software further and to pay off debt owed by Ziegler or PPEG to the company that had developed the software.
18. The reverse merger that Ziegler touted did not occur in January 2008. Ziegler told AR1 that more investors had been found, which had caused a delay, and that instead of going public at \$1.00 per share, PPEG would open at \$5.00 per share.
19. In February 2008, AR1 inquired as to why he had not received a stock certificate. In an email to AR1, Ziegler explained that the stock had not been issued because the merger had not taken place, but once the investment banking firm had finished its due diligence, PPEG would close on the funding, the merger company would be acquired and then the stock would be divided up and issued.

20. Ziegler eventually provided AR1 was a stock certificate for Future Films, Inc. ("FF"), a company that traded on the Pink Sheets under the symbol FURF and which Ziegler served as director.
21. The FF stock opened at \$.50 per share around May 2008, then a large amount of shares were dumped in July 2008, at which time the price dropped to \$.25 per share with no trading at all.
22. In the fall of 2008, AR1 asked TP1 to get his investment back.
23. In September 2008, Truvillion attempted to get AR1 to nullify his shares in FF in exchange for Tru7 stock. AR1 refused. In November 2008, Truvillion sent a transfer agreement to AR1 asking him to sign over the FF shares to Truvillion and to sign the transfer agreement. In exchange, AR1 would get 50,000 shares in Tru7. Again, AR1 refused, but Truvillion sent AR1 the Tru7 shares anyway.
24. Ziegler was the sole signatory for the PPEG bank account in which AR1's funds were deposited.
25. Ziegler represented to AR1 that his investment was for the purchase of company stock in PPEG. However, AR1 received stock in FF.
26. Neither Ziegler nor Truvillion informed AR1 prior to investing that he would receive stock in any company other than PPEG.
27. Ziegler used funds raised from AR1 to pay his own personal expenses, including the payment of child support, gambling expenses and the withdrawal of cash.
28. To date, AR1 has not received any return on his investment, and the Defendants have failed to have AR1's investment returned or any accounting of investment.

FIRST CAUSE OF ACTION
VIOLATION OF ARK. CODE ANN. § 23-42-501
OFFERING AND/OR SELLING UNREGISTERED SECURITIES

29. Plaintiff realleges and incorporates by reference each and every allegation contained in paragraphs 1 through 28 above.

30. The investment discussed herein was a security, specifically stock, as defined in Ark. Code Ann. § 23-42-102(15)(A)(ii).
31. The securities offered and sold by the Defendants, directly or indirectly, personally or through agents, have neither been registered under the Act, nor effectively qualified for any exemption from registration available under the Act or any federal statute or rule.
32. By reason of the foregoing, the Defendants have violated, are violating, and unless enjoined, will continue to violate Ark. Code Ann. § 23-42-501.

SECOND CAUSE OF ACTION
VIOLATION OF ARK. CODE ANN. § 23-42-507(2)
UNTRUE STATEMENTS OF MATERIAL FACTS AND OMISSIONS OF MATERIAL FACTS
IN CONNECTION WITH OFFER, SALE OR PURCHASE OF SECURITIES

33. Plaintiff realleges and incorporates by reference each and every allegation contained in the preceding cause of action.
34. Defendant Ziegler, directly or indirectly, in connection with the offer or sale of securities, made and is making untrue statements of material facts including, but not limited to:
- a. Ziegler represented to AR1 that he would make a profit on his investment;
 - b. Ziegler represented to AR1 that PPEG would go public in January 2008;
 - c. Ziegler sold AR1 an investment in PPEG, when in fact he was provided with stock in FF;
 - d. Ziegler represented to AR1 that the value of PPEG's stock would increase in value from the purchase price of \$.50 per share to \$5.00 per share after PPEG became a publicly traded company, when in fact PPEG did not issue stock to AR1;
 - e. Ziegler represented to AR1 that PPEG had customers who had entered into business deals with PPEG;
 - f. Ziegler represented to AR1 that PPEG submitted quarterly filings in its quest to become publically traded;

- g. Ziegler represented to AR1 that PPEG was an industry leader in 3D motion capture service, software development and education; and
 - h. Ziegler represented to AR1 that PPEG had revenues that exceeded \$3 million per year and that the company's assets exceeded \$15 million.
35. Defendant Ziegler, directly or indirectly, in connection with the offer or sale of securities, omitted and is omitting to state material facts necessary in order to make the statements made, in light of the circumstances under which they were and are made, not misleading, including, but not limited to the following matters:
- a. Any general or specific risk factors associated with the securities;
 - b. The actual background and business experience of the Defendants;
 - c. That the company to which the investor was directed to make his payment was owned or controlled by Ziegler and that the funds would not be used by PPEG for the purpose the investor intended; and
 - d. That investor funds would not be used exclusively for the benefit of PPEG but would be converted to the use of Ziegler.
36. By reason of the foregoing, Defendant Ziegler, directly or indirectly, has violated, is violating, and unless enjoined, will continue to violate Ark. Code Ann. § 23-42-507(2).

THIRD CAUSE OF ACTION
VIOLATION OF ARK. CODE ANN. § 23-42-507(3)
ENGAGING IN ANY ACT, PRACTICE OR COURSE OF BUSINESS
WHICH OPERATES OR WOULD OPERATE AS A FRAUD OR DECEIT UPON ANY PERSON

37. Plaintiff realleges and incorporates by reference each and every allegation contained in the preceding causes of action.
38. The Defendants, in connection with the offer, sale or purchase of securities, have engaged and are engaging in an act, practice or course of business that has operated and continues to operate as a fraud or deceit upon investors.

39. By reason of the foregoing, the Defendants, directly or indirectly, have violated, are violating, and unless enjoined, will continue to violate Ark. Code Ann. § 23-42-507(3).

PRAYER FOR RELIEF

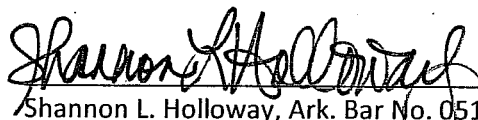
WHEREFORE, the Plaintiff respectfully requests that the Court take the following actions:

- A. Order the Defendants to immediately CEASE AND DESIST from offering or selling any security in Arkansas until the security is properly registered or is offered or sold pursuant to an exemption from registration under the Arkansas Securities Act;
- B. Order the Defendants to immediately CEASE AND DESIST from engaging in any fraudulent activity in connection with the offer or sale of any security in Arkansas;
- C. Order the Defendants, jointly and severally, to pay restitution to AR1, including interest at the rate of six percent (6%) per year;
- D. Impose a civil penalty in an amount not to exceed \$10,000 for each violation of the Act committed by Defendants, and order Defendants to pay the costs of the investigation of this matter, pursuant to the Act;
- E. Grant such other and further relief as the Court deems just and appropriate.

Respectfully submitted,

A. Heath Abshure,
Arkansas Securities Commissioner

By:


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