State of California - Department of Corporations

BEFORE THE DEPARTMENT OF CORPORATIONS
OF THE STATE OF CALIFORNIA

In the Matter of the Desist and Refrain Order Issued Against: STEVE O. COOPER, SR., PEGGY SUE COOPER, MICHAEL E. STEVENSON, M.E. STEVENSON, INC. and YEMI OGUNBASE, Respondents.	Case No. ENF 7078 OAH No. L2006010092 **FINAL DECISION (AFTER REJECTION OF PROPOSED DECISION) AND ORDER**

I

PROCEDURAL HISTORY

On March 6, 2006, in San Diego, California, James Ahler, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter. Lindsay B. Herrick, Corporations Counsel, represented complainant, the California Corporations Commissioner. Respondent Michael E. Stevenson, who was present throughout the hearing, represented himself, M.E. Stevenson, Inc. and Yemi Ogunbase. Yemi Ogunbase did not personally appear. Steven O. Cooper, Sr., Peggy Sue Cooper, and SOCM Enterprises, Inc. entered into a written stipulation on March 2, 2006, and did not appear at the hearing. Oral and documentary evidence was received and the matter was submitted for decision.

On March 8, 2006, the Administrative Law Jude submitted a Proposed Decision, which was rejected by the California Corporations Commissioner on June 7, 2006. Pursuant to Section 11517(c) of the Government Code, Michael E. Stevenson, M.E. Stevenson, Inc., and Yemi Ogunbase were served with the Notice of Nonadoption of Proposed Decision, and were notified that the case would be decided by the California Corporations Commissioner upon the record, including the transcript of the proceedings held on March 6, 2006, and upon any written argument offered by the parties. Respondents submitted no written arguments. Lindsay B. Herrick, Corporations Counsel, on behalf of the Department of Corporations, submitted written argument on June 23, 2006.

II

FACTUAL FINDINGS

The Regulation of the Offer and Sale of Securities

1. The Federal Government entered the area of securities regulation in 1933, following the 1929 stock market crash. The first effort at regulation, the Securities Act of 1933, was followed shortly thereafter by the Securities Exchange Act of 1934. Other special federal acts have followed since then. The Securities and Exchange Commission (SEC) directly enforces the federal security laws through the Securities Act of 1934 and it indirectly enforces those federal laws through oversight of the National Association of Securities Dealers (NASD) and the stock exchanges.

2. State securities laws, commonly known as Blue Sky laws, have been enacted in all states. They regulate to some degree, the offer, subscription, sale and issue of shares of stock and other securities. These laws were enacted to protect the public from insubstantial, unlawful, and fraudulent stock and investment schemes, and to promote full disclosure of all information necessary to enable investors to make informed and intelligent decisions.

3. California's Blue Sky law – known as the Corporate Securities Law of 1968 – is set forth at California Corporations Code section 25000 et seq. It regulates the offer and sale

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of securities in California and requires registration of broker-dealers and stockbrokers doing business in California.

4. Before a "security"[1] is sold in California, it must be qualified with the Department of Corporations, unless an exemption exists. Many securities and many security transactions are exempt from or are preempted from state regulation by federal law.[2]

5. Qualification in California may be accomplished by a number of means including (a) coordination of a security for which a registration statement was filed under the Securities Act of 1933 (Corp. Code § 25111), (b)(i) notification that the security is registered under Section 12 of the Securities Exchange Act of 1934 (Corp. Code § 25111) or (ii) was issued by an investment company registered under the Investment

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[1] California Corporations Code section 25019 sets forth an exhaustive but not all-inclusive definition of what constitutes a "security." Under the Corporate Securities Law of 1968, a "security" is defined to include membership in incorporated or unincorporated associations, whether or not evidenced by a written instrument.

An investment scheme promising a fixed rate or return may be a "security" subject to the federal securities laws. For example, in *SEC v Edwards* (2004) 540 U.S. 389, the United States Supreme Court concluded the *Howey* test (see, Legal Conclusion 7) could be used to determine if a particular scheme was an investment contract and subject to federal security laws, and there was no reason to distinguish between promises of fixed returns and promises of variable returns.

[2] For example, Regulation D private offerings are exempt from registration if there has been full compliance with SEC Rules 501-503. "Covered securities" listed or approved for listing on the New York Stock Exchange, AMEX and the NASDAQ/National Market, and securities of the same issuer which are equal in rank or senior to such listed securities are preempted from state regulation by Section 18 of the Securities Act of 1933.

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Company Act f 1940 (Corp. Code § 25112) or (iii) was issued by permit (Corp. Code § 25113).

6. The California Corporations Commissioner has several legal remedies to enforce the Corporate Securities Law of 1968.

Proscribed conduct may be enjoined by a civil action under Corporations Code section 25530 or by a Desist and Refrain Order issued directly by the California Corporations Commissioner under Corporations Code section 25532. Civil penalties may be sought under Corporations Code section 25535. Finally, criminal prosecution may be initiated under Corporations Code section 25540.

7. This matter involved the appeal of a Desist and Refrain Order issued under Corporations Code section 25532.

The Principals

8. Steve O. Cooper, Sr. (Cooper) resides in San Diego County. Cooper is the founder and pastor of Nu-Way Christian Ministries, Inc. a non-denominational church with congregations in San Diego County and Riverside County.

9. Michael E. Stevenson (Stevenson) resides in Riverside County. He is the President of M.E. Stevenson, Inc., a Nevada Corporation, which he founded in May 2004. According to Stevenson, M.E. Stevenson, Inc. is an education corporation devoted to providing educational services in the fields of nutrition and financial services. Stevenson's 25-year-old stepson, Yemi Ogunbase, is the Secretary of M.E. Stevenson, Inc.

10. On December 8, 2004, Cooper founded SOCM Enterprises, Inc. (SOCM).[3] Cooper is the President and CEO of SOCM. His wife, Peggy Cooper, is the Secretary and Treasurer.

[3] SOCM is an acronym for Steve O. Cooper Ministry.

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The Formation of the Relationship Between the Coopers and Stevenson

11. The Coopers lost about $20,000 of a $70,000 stock market investment. Stevenson came to learn the Coopers needed financial help. The Coopers were told Stevenson was knowledgeable in the field of investments, particularly in trading options. Cooper appeared to be familiar with the risks inherent in trading strategies. Stevenson was able to recoup some of the loss. The Coopers were very happy.

The Investment Club

12. Cooper and Stevenson discussed forming an investment club so others could reap the financial benefits of trading options. It was decided that SOCM would become the entity through which club members would make the investments. Cooper would seek out investors and Stevenson would make the trades.

The initial investment club funding came from what was left of Cooper's original $70,000 investment and $24,000 that was invested by Stevenson. Additional capital was to come from investment club members, persons who were supposed to be known directly to Cooper, including Cooper's family members, friends and parishioners.

13. Before launching the investment club, SOCM and M.E. Stevenson, Inc. formed a "syndicate" whose stated purpose was to grow the investment club through the disciplined and conservative management of assets. The syndicate agreement required delivery of a monthly statement to club members. Between SOCM and M.E. Stevenson, Inc. the agreement was to split "profits" equally. Cooper, on behalf of SOCM, gave Stevenson a limited power of attorney which authorized Stevenson to make all trades. It was understood all of Stevenson's trading would be done online.

14. Prospective investment club members were provided with a customer agreement and a club member policy agreement. The initial policy agreement stated in part:

"2. All trading is performed for a fee by the "Syndicate."

and

"7. Club members will receive earnings of 3% on $2000 to $5000. Club members will earn 5 % on $5001 and over paid monthly. The maximum earned is either 3% or 5% on money invested not both."

and

"15. Make checks payable to SOCM Enterprises."

15. According to Cooper, "profits" were funds over and above the guaranteed interest that was paid to club members; an investor was entitled to earnings and a member of the syndicate (namely, SOCM and M.E. Stevenson, Inc.) was entitled to profits; an investor who was not a member of the syndicate was not entitled to profits.

Neither the customer agreement nor the policy agreement advised investment club members of the manner by which the "syndicate" trading fee would be determined. Neither the customer agreement nor the policy agreement advised investment club members how their investments and the fixed returns thereon were being secured.[4]

16. The investment club ultimately came to include Cooper, Cooper's wife, Cooper's parents, Cooper's older sister, Nu-Way Ministries (Cooper's church), Stevenson and several parishioners personally known to Cooper.

Stevenson, in both his testimony at the administrative hearing and in his testimony before the Securities Exchange Commission (Exh. 10, p.91), claimed the only members of the investment club he knew about were SOCM and M.E. Stevenson, Inc. and he was unaware SOCM had solicited investment club members. Stevenson's testimony was not credible. Stevenson knew there were and would be other investors. This conclusion was compelled by Stevenson warning Cooper about three matters: "One, we could not

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[4] Stevenson made an initial investment of $24,000, which was intended to "cover any three percent invested or five percent invested." The pledge of that investment to secure a return was not reduced to writing and was not disclosed to club members. The $24,000 investment came from the refinancing of Stevenson's house.

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solicit…two, it had to be people we knew. And the third thing was to provide the benefit…give what we say. Do what we say we're going to do." (Exh. 10, p. 92. See also, Exh. 10, p. 99.)

Stevenson provided this warning to Cooper because he knew Cooper was actively encouraging others to join the investment club. Stevenson could not avoid constructive knowledge of Cooper's offers of membership in the investment club through the guise of a warning.

17. Stevenson essentially testified M.E. Stevenson, Inc.'s sole client was SOCM, and did not engage in trades for any other person or entity. In fact, Stevenson knew he was trading for others who were members of the investment club members, other than Cooper and his wife, had a pre-existing one of these investment club members, other than Cooper and his wife, had a pre-existing personal or business relationship with Stevenson. It was not established that any one of the investment club members had the capacity to protect himself or herself within the investment club by reason of business or financial experience. Stevenson testified trades were based on "market research," but in fact the market research consisted merely of Stevenson listening to CNBC, the Weather Channel, and other news available to the general public.

18. Neither Cooper, SOCM, Stevenson nor M.E. Stevenson, Inc. was registered in any capacity with the National Association of Securities Dealers. Neither Cooper, SOCM, Stevenson nor M.E. Stevenson, Inc. was registered with the Securities and Exchange Commission. Neither Cooper, SOCM, Stevenson nor M.E. Stevenson, Inc. was registered as an investment adviser with any state regulatory agency including the California Department of Corporations.

<u>The Bell Transaction</u>

19. David Bell (Bell) resides in San Diego County. In June 2005, Bell heard Cooper was offering individuals an opportunity to participate in an investment club. Bell had heard of Nu-Way Ministries, but he did not know Cooper.

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On June 20, 2005, Bell called Cooper and told him he was interested in joining the investment club. Cooper told Bell a $2,000- $5,000 investment would return three percent per month and an investment of $5,000 or more would return five percent a month. Bell and Cooper met at a Coco's Restaurant to discuss the investment opportunity further.

Cooper told Bell the investment was through SOCM Enterprises, that the investment club was four months old, and it consisted of ten investors who had invested approximately $500,000. Cooper then said he had only eight investors. Cooper told Bell an investor's check was to be made out to SOCM Enterprises and funds would then be sent directly from SOCM to M.E. Stevenson, Inc., which would invest the finds in stocks and options. Cooper provided Bell with various documents concerning the investment club. Bell did not know Stevenson.

Jurisdictional Matters

20. On November 18, 2005, a Desist and Refrain Order was signed by Alan S. Weinger, Acting Deputy Commissioner, on behalf of Wayne Strumpfer, Acting California Corporations Commissioner. The Desist and Refrain Order, together with other required jurisdictional documents, was directed to and served on Michael E. Stevenson and others.

Roy R. Withers, an attorney, requested "an administrative hearing to challenge facts that support the Desist and Refrain Order issued by your organization" on behalf of Stevenson and M.E. Stevenson, Inc. Attorney Withers waived the timelines prescribed by Corporations Code section 25532, subdivision (d). Attorney Withers later withdrew from representation of Stevenson and M.E. Stevenson, Inc. in this proceeding.

On January 16, 2006, the Office of Administrative Hearings received a request for a continuance, which was filed on behalf of all parties. The hearing was continued to March 6 and 7, 2006. Stevenson, individually and doing business as M.E. Stevenson, Inc., was served with a Notice of Hearing.

On March 2, 2006, a written stipulation signed by Steve O. Cooper, Sr. and Peggy Sue Cooper was filed with the Office of Administrative Hearings. The Coopers were represented by counsel. In that stipulation, the Coopers stipulated that each of them, and SOCM Enterprises, Inc., had offered and sold memberships in an investment club in violation of the California Corporate Securities Law of 1968 and each of them consented to desist and refrain from such conduct in the future.

On March 6, 2006, the record in the administrative proceeding was opened. Opening statements were given. Stevenson admitted he received Bell's declaration under Government Code section 11514 and had not requested cross-examination. Documentary evidence and sworn testimony was received, closing arguments were given, the record was closed and the matter was submitted.

III

LEGAL CONCLUSIONS

Relevant Statutory Authority

1. Corporations Code section 25532 provides in part:

> (a) If, in the opinion of the commissioner, (1) the sale of a security is subject to qualification under the law and it is being or has been offered or sold without first being qualified, the commissioner may order the issuer or offeror of the security to desist and refrain from the further offer or sale of security until qualification has been made under this law or (2) the sale of a security is subject to the requirements of Section 25100.1, 25101.1, or 25102.1 and the security is being or has been offered or sold without first meeting the requirements to those sections, the commissioner may order the issuer or offeror of that security to desist and refrain from the further offer or sale of the security until those requirements have been met.
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> (b) If, in the opinion of the commissioner, a person has been or is acting as a broker-dealer or investment adviser, or has been or is engaging in broker-dealer or investment adviser activities, in violation of Section 25210, 25230, or 25230.1, the commissioner may order that person to desist and refrain from the activity until the person has been appropriately licensed or the required filing has been made under this law.

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(c) If, in the opinion of the commissioner, a person has violated or is violating Section 25401, the commissioner may order that person to desist and refrain from the violation…

2. Corporations Code section 25110 provides:

> It is unlawful for any person to offer or sell in this state any security in an issuer transaction (other than in a transaction subject to Section 25120), whether or not by or through underwriters, unless such sale has been qualified under Section 25111, 25112, or 25113 (and no order under Section 225140 or subdivision (a) of Section 25143 is in effect with respect to such qualification) or unless such security or transaction is exempted or not subject to qualification under Chapter 1 (commencing with Section 25100) of this part. The offer or sale of such a security in a manner that varies or differs from, exceeds the scope of, or fails to conform with either a material term or material condition of qualification of the offering as set forth in the permit or qualification order, or a material representation as to the manner of offering which is set forth in the application for qualification, shall be an unqualified offer or sale.

3. Corporations Code section 25017 provides:

> (a) 'Sale' or 'sell' includes every contract of sale of, contract to sell, or disposition of, a security for value. 'Sale' or 'sell' includes any exchanged of securities and any change in the rights, preferences, privileges, or restrictions of or on outstanding securities.
> (b) 'Offer" or 'offer to sell' includes every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security for value…

4. Corporations Code section 25019 provides in part:

> 'Security' means … membership in an incorporated or unincorporated association …participation in any profit-sharing agreement…investment contract…put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities (including any interest therein or based on the value thereof)…or, in general, any interest or instrument commonly known as a 'security'… All of the

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> foregoing are securities whether or not evidenced by a written document. 'Security' does not include: (1) any beneficial interest in any voluntary inter vivos trust which is not created for the purpose of carrying on any business or solely for the purpose of voting, or (2) any beneficial interest in any testamentary trust, or (3) any insurance or endowment policy or annuity contract under which an insurance company admitted in this state promises to pay a sum of money (whether or not based upon the investment performance of a segregated fund) either in a lump sum or periodically for life or some other specified period, or (4) any franchise subject to registration under the Franchise Investment Law (Division 5 (commencing with Section 31000)), or exempted from registration by Section 31100 or 31101.

5. Corporations Code section 25009 provides in part:

> (a) 'Investment adviser' means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing or selling securities … 'Investment adviser' does not include (1) a bank, trust company or savings and loan association; (2) an attorney at law, accountant, engineer or teacher whose performance of these services is solely incidental to the practice of his or her profession; (3) an associated person of an investment adviser; (4) a broker-dealer or agent of a broker-dealer whose performance of these services is solely incidental to the conduct of the business of a broker-dealer and who receives no special compensation for them; or (5) a publisher of any bona fide newspaper, news magazine or business or financial publication of general, regular and paid circulation and the agents and servants thereof, but this paragraph (5) does not exclude any such person who engages in any other activity which would constitute that person an investment adviser within the meaning of this section…"

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6. Corporations Code section 25230 provides in part:

> (a) It is unlawful for any investment adviser to conduct business as an investment adviser in this state unless the investment adviser has first applied for and secured from the commissioner a certificate, then in effect, authorizing the investment adviser to do so or unless the investment adviser is exempted…
> (b) No person, on behalf of an investment adviser that has obtained a certificate pursuant to Section 25231, may, in this state: offer or negotiate for the sale of investment advisory services of the investment adviser; determine which recommendations shall be made to, make recommendations to, or manage the accounts of, clients of the investment adviser; or determine the reports or analyses concerning securities to be published by the investment adviser, unless the investment adviser and that person have complied with rules that the commissioner may adopt for the qualification and employment of those persons…

7. Corporations Code section 25401 provides:

> It is unlawful for any person to offer or sell a security in this state or buy or offer to buy a security in this state by means of any written or oral communication which includes an untrue statement of a material fact or omits to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.

General Authority

8. In defining what is a "security" subject to regulation, two major themes or modes of analysis have been used by the courts when faced with a situation when the interest at issue is not clearly described by a term in the statutory definition. These tests have been applied, either separately or together, by both federal and California courts in making the factual determination of whether a particular transaction is a security. A transaction is considered a security if it satisfies either or both tests.

Under the first test, a security will be found when a person has invested value in a common enterprise with an expectation of profit to be derived from the substantial efforts of others. This is sometimes referred to as the *Howey* test because of the United States

Supreme Court's decision in *SEC v. W.J. Howey* (1946) 328 U.S. 293. The *Howey* analysis has been used by many California courts to determine the existence of a security. See, e.g., *People v. Syde* (1951) 37 Cal.2d 765; *Tomei v. Fairline Feeding Corp.* (1977) 67 Cal. App.3d 394; and, *Moreland* v. *Department of Corporations* (1987) 196 Cal. App.3d 506.

The second mode of analysis is known as the "risk capital" approach, first used in California in *Silver Hills Country Club v. Sobieski* (1961) 55 Cal.2d 811. That decision permitted the finding of a security when capital is sought from third parties, which will be risked in a start-up of a business venture for profit. There is no requirement that an investor have an expectation to receive a monetary profit from the investment. The passive position of the investor has been emphasized by the California Supreme Court as an essential element of the risk capital test.

The *Howey* and the risk capital tests are not mutually exclusive. Sometimes their elements are combined in an attempt to determine whether an investment involves a security subject to registration in California. See, e.g., *Moreland v. Department of Corporations* (1987) 194 Cal. App.3d 506; 239 Cal. Rptr. 558; see also *People v. Witzerman* (1972) 29 Cal.App.3d 169 and *People v. Schock* (1984) 152 Cal.App.3d 379.

Relevant Case Law

9. *People v. Miller* (1987) 192 Cal. App.3d 1505, stands for the proposition that the direct solicitation and sale by another of an unqualified, unexempt security does *not* insulate an individual from liability for issuing his *own* unregistered securities.

10. In *People v. Simon* (1995) 9 Cal. 4th 193, 515-516, the California Supreme Court stated that in an "enforcement action by the commissioner to enjoin future sales by means of false or misleading statements is designed to protect the public…[f]or that reason, it is irrelevant that the defendant knows that the statements or omissions are false or misleading."

Cause Exists to Affirm the Desist and Refrain Order

The preponderance of the evidence established good cause to affirm the Desist and Refrain Order issued against Michael E. Stevenson, Yemi Ogunbase, and M.E. Stevenson, Inc. under Corporations Code section 25532

A. Corporations Code Section 25110

11. Michael E. Stevenson, M.E. Stevenson, Inc. and Yemi Ogunbase were involved in the solicitation and sale of investment club memberships to various persons. Mr. Stevenson, on behalf of M.E. Stevenson, Inc., offered to sell club memberships to investors. Mr. Stevenson made representations to prospective investors that they would receive investment returns from the trading of options. Yemi Ogunbase, as an officer of M.E. Stevenson Inc., had the duty of drafting correspondence as well as providing "market trend information and consulting" services to Stevenson and M.E. Stevenson, Inc. Based on the evidence, there is good cause to affirm the D&R Order issued against Michael E. Stevenson, M.E. Stevenson, Inc. and Yemi Ogunbase for failing to qualify the investment club memberships as securities, in violation of Corporations Code Section 25110. The offering for sale of investment club memberships through SOCM constituted the offering of a "security" in the form of an investment contract, a security which was not exempt and was therefore subject to qualification.

B. Corporations Code Section 25230

12. Michael E. Stevenson and M.E. Stevenson, Inc. conducted business in California as investment advisers without first having applied for and secured certificates authorizing them to do so. Mr. Stevenson had a limited power of attorney to make trades in SOCM's behalf and was paid to do this. Mr. Stevenson utilized "market trend" information to not only make trades on behalf of the investment club between April of 2005 and September of 2005, but also to offer to sell club memberships to prospective investors. Based on the evidence, there is good cause to affirm the D&R Order issued

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against Michael E. Stevenson and M.R. Stevenson, Inc. for failing to obtain an investment adviser certificate, in violation of Corporations Code Section 25230.

C. Corporations Code Section 25401

13. According to the evidence presented, Respondents agreed to form an investment club. Michael E. Stevenson, and Yemi Ogunbase acted through their corporation, M.E. Stevenson, Inc. as President/CEO and Treasurer/Secretary respectively. Investors were solicited to join the investment club and were initially promised returns of three percent per month for investments of $2,000 to $5,000 and five percent per month for investments of amounts over $5,000. However, the investors were later told they would be receiving only three percent per month regardless of the amount they had invested. Neither the customer agreement nor the policy agreement advised investment club members of how their investments and the fixed returns thereon were being secured. Finally, investment club members were not advised as to the manner by which the "syndicate" trading fee would be determined. Based on the evidence, there is good cause to affirm the D&R Order issued against Michael E. Stevenson, M.E. Stevenson, Inc. and Yemi Ogunbase for material omissions or misrepresentations in the offer and sale of securities, in violation of Corporations Code Section 25401.

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ORDER

The Desist and Refrain Order signed on November 18, 2005, directed to Michael E. Stevenson, President, individually and as President and CEO of M.E. Stevenson, Inc., and to Yemi Ogunbase, as Secretary of M.E. Stevenson, Inc. and to M.E. Stevenson, Inc. is affirmed.

This Decision shall become effective on July 26, 2006.

IT IS SO ORDERED.

DATED: July 25, 2006.

Preston DuFauchard
California Corporations Commissioner