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SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION: GENERAL EQUITY
HUDSON COUNTY
DOCKET NO. HUD-C-71-09

JEFFREY S. CHIESA, Attorney General of New Jersey, on behalf of ABBE R. TIGER, Chief of the New Jersey Bureau of Securities,[1]

Plaintiff,

v.

ZOLTON A. PHILLIPS, individually and as principal of Peanut Butter Better Company and ZAP Products Corporation;
PEANUT BUTTER BETTER COMPANY, a New Jersey Corporation;
ZAP PRODUCTS CORPORATION, a New Jersey Corporation;
MONIQUE OLIVIA DIXON, individually; and
NADIYA PHILLIPS, individually,

Defendants.

CIVIL ACTION

ORDER GRANTING FINAL JUDGMENT AGAINST DEFENDANT ZOLTON A. PHILLIPS, AND GRANTING FINAL JUDGMENT BY DEFAULT AGAINST DEFENDANTS PEANUT BUTTER BETTER COMPANY, ZAP PRODUCTS CORPORATION, ~~MONIQUE OLIVIA DIXON PHILLIPS, AND NADIYA PHILLIPS~~

J 32852-12

[1] This action was commenced by former Attorney General of New Jersey Anne Milgram, on behalf of former Chief of the New Jersey Bureau of Securities Marc B. Minor. In accordance with R. 4:34-4, the caption has been revised to reflect the current New Jersey Attorney General and current Chief of the New Jersey Bureau of Securities.

THIS MATTER was opened to the Court by Jeffrey S. Chiesa, Attorney General of the State of New Jersey, and Abbe R. Tiger, Chief of the New Jersey Bureau of Securities (Deputy Attorneys General Anna M. Lascurain and Elizabeth R. Lash, appearing), for an order granting final judgment against defendant Zolton A. Phillips ("Phillips"), and granting final judgment by default against Peanut Butter Better Company ("Peanut Butter Better") and ZAP Products Corporation ("ZAP Products"), for alleged violations of the New Jersey Uniform Securities Law (1997), N.J.S.A. 49:3-47 et seq. (the "Securities Law"), including violations of the following provisions: N.J.S.A. 49:3-52, N.J.S.A. 49:3-56(a), N.J.S.A. 49:3-56(h), and N.J.S.A. 49:3-60, and for final judgment against relief defendants Nadiya Phillips and Monique Olivia Dixon Phillips ("Dixon Phillips"). On December 1, 2010, a trial commenced against defendant Phillips, and pursuant to R. 4:43-2, a simultaneous proof hearing commenced against defaulting defendants Peanut Butter Better, ZAP Products, Nadiya Phillips, and Dixon Phillips, and continued on January 10, 2011, June 22, 2011, and June 29, 2011. Based on the Court's consideration of the documentary evidence and testimony, the Court finds good and sufficient cause to grant the relief sought by Plaintiff, makes the following findings of fact and conclusions of law, and enters final judgment.

The Court finds that:

1. Phillips, and Peanut Butter Better and ZAP Products, through Phillips, beginning in the fall of 2005, sold unregistered securities in the form of promissory notes to at least eighteen (18) investors, in or from the New Jersey;

2. Phillips and Peanut Butter Better and ZAP Products, through Phillips, attempted to finance Peanut Butter Better and ZAP Products by raising $109,750 from three (3) individuals and their spouses, and funds from at least fifteen (15) other individuals or couples;

3. Phillips and Peanut Butter Better and ZAP Products, through Phillips, purportedly raised funds from investors to finance Peanut Butter Better and ZAP Products, but primarily used investor funds for Phillips' personal expenses, and primarily deposited investor funds into Phillips' personal accounts;

4. The Peanut Butter Better and ZAP Products securities were neither registered with the Bureau pursuant to N.J.S.A. 49:3-61 (registration of securities by qualification), N.J.S.A. 49:3-61.1 (registration of securities by coordination), N.J.S.A. 49:3-61.2 (registration of securities by notification), nor exempt from registration pursuant to N.J.S.A. 49:3-50, nor were they federally covered securities pursuant to

N.J.S.A. 49:3-60.1. Peanut Butter Better, ZAP Products, and Phillips violated N.J.S.A. 49:3-60 by selling nonexempt, unregistered securities;

5. Phillips was not registered with the Bureau as an "agent," as defined by N.J.S.A. 49:3-49(b), to offer or sell the securities to, from, or within New Jersey, nor was he exempt from registration. Phillips violated N.J.S.A. 49:3-56(a) (acting as an agent without registration) and N.J.S.A. 49:3-60 (selling unregistered securities) by offering and selling the unregistered securities issued by Peanut Butter Better and ZAP Products to, from, or within New Jersey without being registered as an "agent" of Peanut Butter Better or ZAP Products;

6. Peanut Butter Better violated N.J.S.A. 49:3-56(h) (employing unregistered agents) and N.J.S.A. 49:3-60 by selling unregistered securities through Phillips, who was not registered as its "agent" as required by N.J.S.A. 49:3-56(a);

7. ZAP Products violated N.J.S.A. 49:3-56(h) and N.J.S.A. 49:3-60 by selling unregistered securities through Phillips, who was not registered as its "agent" as required by N.J.S.A. 49:3-56(a);

8. Phillips and Peanut Butter Better and ZAP Products, through Phillips, in connection with the sale of

securities, employed a device, scheme or artifice to defraud in violation of N.J.S.A. 49:3-52(a), by:

a. convincing investors through misleading and false oral and written communications, including conversations, e-mails, and promissory notes, that Peanut Butter Better and ZAP Products were soliciting funds to finance Peanut Butter Better and ZAP Products;

b. failing to disclose to investors that Phillips would use almost all of the investor funds for his and others' personal benefit; and

c. primarily using investor funds for Phillips' and others' benefit, instead of financing Peanut Butter Better and ZAP Products; and

9. Phillips and Peanut Butter Better and ZAP Products, through Phillips, in connection with the sale of securities, made the following materially false and misleading statements and omitted material facts in violation of N.J.S.A. 49:3-52(b), by:

a. failing to disclose that the Peanut Butter Better and ZAP Products securities were not registered with the Bureau;

b. failing to disclose that Phillips was not registered with the Bureau;

c. failing to disclose any risks in connection with investing in Peanut Butter Better or ZAP Products;

d. misrepresenting that investor funds would be primarily used to develop Peanut Butter Better and ZAP Products;

e. failing to disclose that funds for Peanut Butter Better and ZAP Products would primarily be deposited in Phillips' personal accounts, instead of the entities' business accounts;

f. failing to disclose that Phillips would use Peanut Butter Better and ZAP Products investor funds to pay for some of his personal expenses;

g. failing to disclose that Phillips would transfer some Peanut Butter Better and ZAP Products investor funds to relief defendants Nadiya Phillips and Dixon Phillips;

h. failing to disclose that some investor funds, even though deposited in a ZAP Products business account, were only used to cover Phillips' withdrawals; and

i failing to disclose that some investor funds would be diverted to other businesses unrelated to Peanut Butter Better or ZAP Products;

10. Phillips and Peanut Butter Better and ZAP Products, through Phillips, in connection with the sale of securities, engaged in acts, practices, or courses of business that operated as a fraud or deceit upon investors, in violation of N.J.S.A. 49:3-52(c):

a. Phillips and Peanut Butter Better and ZAP Products, through Phillips, provided investors with false, misleading, and incomplete information, so that investors based their decisions whether to invest on false, misleading, and incomplete information. Among other misrepresentations and omissions, the misrepresentation by Phillips and Peanut Butter Better and ZAP Products, through Phillips, that investor funds would be used to finance Peanut Butter Better and ZAP Products, and omission that investor funds were used primarily for Phillips' and others' personal benefit, acted as a fraud or deceit upon investors. Investors would have abstained from

investing in Peanut Butter Better or ZAP Products, or would have questioned the investment, had they known Phillips would use their funds for purposes unrelated to Peanut Butter Better or ZAP Products;

11. Phillips, Peanut Butter Better, ZAP Products, ~~Nadiya Phillips, and Dixon Phillips~~ engaged in the acts and practices alleged in Plaintiff's Amended Verified Complaint ("Complaint");

12. The acts and practices of Phillips, Peanut Butter Better, and ZAP Products constituted violations of the Securities Law;

13. For each violation of the Securities Law, Peanut Butter Better, ZAP Products, and Phillips could be assessed a penalty of $10,000 for the first violation, and $20,000 for each subsequent violation pursuant to N.J.S.A. 49:3-70.1. Peanut Butter Better, ZAP Products, and Phillips committed one-hundred sixty (160) total Securities Law violations, as follows:

    a. Phillips committed eighty (80) violations of N.J.S.A. 49:3-52, N.J.S.A. 49:3-56(a), and N.J.S.A. 49:3-60;

    b. Peanut Butter Better committed seventy (75) violations of N.J.S.A. 49:3-52, N.J.S.A. 49:3-56(h), and N.J.S.A. 49:3-60; and

c. ZAP Products committed five (5) violations of N.J.S.A. 49:3-52, N.J.S.A. 49:3-56(h), and N.J.S.A. 49:3-60;

14. ~~Dixon Phillips and Nadiya Phillips were unjustly~~ enriched by receiving funds from Phillips which were directly traceable to an investor, for no legitimate purpose. Dixon Phillips was unjustly enriched in the amount of ~~$9,516.96~~, and Nadiya Phillips was unjustly ~~enriched in the~~ amount of $11,008.05.

The Court, on this 2nd day of February 201~~3~~ ORDERS that:

15. Final judgment is granted to Plaintiff against defendants Phillips, Peanut Butter Better, and ZAP Products, as to Counts I through III, and Count VI of the Complaint (N.J.S.A. 49:3-52(a)-(c), and N.J.S.A. 49:3-60, respectively);

16. Final judgment is granted to Plaintiff against defendant Phillips as to Count IV of the Complaint (N.J.S.A. 49:3-56(a));

17. Final judgment is granted to Plaintiff against Peanut Butter Better and ZAP Products as to Count V of the Complaint (N.J.S.A. 49:3-56(h));

18. Final judgment is entered against Peanut Butter Better, ZAP Products, and Phillips, jointly and severally, in the total amount of ~~$669,750,~~ 361,75

representing $109,750 in restitution, pursuant to N.J.S.A. 49:3-69(a)(2), and ~~$560,000~~ 160,000 in civil monetary penalties, pursuant to N.J.S.A. 49:3-70.1;

19. ~~Final judgment is granted to Plaintiff against~~ defendants Nadiya Phillips and Dixon Phillips, as to Count VII of the Complaint (~~unjust~~ enrichment), in the amount of $11,008.05 against defendant Nadiya Phillips, and in the amount of $9,516.96 against Dixon Phillips, ~~for disgorgement;~~

20. Phillips, Nadiya Phillips, and Dixon Phillips' affirmative defenses are stricken;

21. Payment of restitution, the civil monetary penalty, ~~and the disgorged funds~~ shall be made by attorney trust fund account check, certified check or other guaranteed funds, made payable to the "State of New Jersey, Bureau of Securities" and delivered to the attention of the Bureau Chief, at the following address: Bureau of Securities, 153 Halsey Street, 6th Floor, Newark, New Jersey 07102;

22. Defendants Peanut Butter Better, ZAP Products, and Phillips are permanently restrained and enjoined from violating the Securities Law;

23. Defendants Peanut Butter Better, ZAP Products, and Phillips, individually and by or through any corporation, business entity, agent, employee, broker,

partner, officer, director, attorney, stockholder and/or any other person who is directly or indirectly under their control or direction, are permanently restrained and enjoined from directly or indirectly violating the Securities Law and, specifically, from:

a. engaging in the securities business in New Jersey in any capacity, including, but not limited to, acting as a broker-dealer, agent, investment adviser, investment adviser representative, and/or employing a broker-dealer, agent, investment advisor, investment adviser representative, or otherwise;

b. issuing, offering for sale or selling, offering to purchase or purchasing, distributing, promoting, advertising, soliciting, and/or negotiating, advancing the sale of and/or promoting securities, or advising regarding the sale of any securities, in any manner to, from, or within the State of New Jersey; and

c. engaging in the conduct described in the Complaint filed in this matter, including, but not limited to, employing any device, scheme or artifice to defraud, making or

omitting any untrue statement of a material fact, and engaging in any act or practice which operates as a fraud or deceit, in violation of the Securities Law;

24. Peanut Butter Better, ZAP Products, and Phillips, are hereby denied all exemptions contained in: N.J.S.A. 49:3-50(a)(9), (a)(10), (a)(11), and (b); and N.J.S.A. 49:3-56(b), (c), (g);

25. This Court shall retain jurisdiction to enforce this Order; and

26. Plaintiff shall serve a copy of this Order on defendants Phillips, Nadiya Phillips, Dixon Phillips, Peanut Butter Better and ZAP Products, within 7 days of Plaintiff's counsel's receipt of same.

Honorable Thomas P. Olivieri, P.J.Ch.

Reason on the record on Feb 2, 2012