

BEFORE THE
DEPARTMENT OF CORPORATIONS
STATE OF CALIFORNIA

In the Matter of the Desist and Refrain
Order:

IU INVESTMENTS, L.L.C.
Elijah Bhang, aka Elijah Bang
Daniel Lee

Respondents.

OAH No.: 2009061346

DECISION

The attached Proposed Decision of the Administrative Law Judge of the Office of Administrative Hearings, dated July 15, 2009, is hereby adopted by the Department of Corporations as its Decision in the above-entitled matter.

This Decision shall become effective on November 19, 2009.

IT IS SO ORDERED this 18th day of November 2009.

CALIFORNIA CORPORATIONS COMMISSIONER

Preston DuFauchard

BEFORE THE
DEPARTMENT OF CORPORATIONS
STATE OF CALIFORNIA

In the Matter of the Desist and Refrain
Order:

OAH Case No. 2009061346

IU INVESTMENTS, L.L.C.
Elijah Bhang, aka Elijah Bang
Daniel Lee

Respondents.

PROPOSED DECISION

Presiding Administrative Law Judge Michael A. Scarlett, Office of Administrative Hearings, State of California, heard this matter on July 15, 2009, in Los Angeles, California.

Mary Ann Smith, Senior Corporations Counsel, represented the California Corporations Commissioner (Complainant).

IU Investments, LLC was represented Elijah Bhang, aka Elijah Bang, Chief Executive Officer and Chief Manager (Respondents), who appeared in propria persona to represent the interests of IU Investments, LLC and himself. Respondent Daniel Lee, nor any representative on his behalf, appeared at hearing.

Oral and documentary evidence was presented and the matter was submitted for decision on July 15, 2009.

FACTUAL FINDINGS

1. On May 19, 2009, Preston DuFauchard, California Corporations Commissioner (Commissioner), by Alan S. Weinger, Acting Deputy Commissioner, Enforcement Division, issued a desist and refrain order to Respondents under California Corporations Code¹ sections 25532, 25110, and 25401. The desist and refrain order directed Respondents to refrain from making unlawful offers or sales of securities in the State of California. The Commissioner is responsible for administering the provisions of the "Corporate Securities Law" as stated in section 25000 et seq.

2. On June 24, 2009, Respondents submitted a written request for an administrative hearing.

¹ All further statutory references are to the California Corporations Code, unless otherwise stated.

3. At all relevant times, Elijah Bhang, aka Elijah Bang (Bang) was the Chief Executive Officer and Chief Manager of IU Investments, LLC (IU), a Nevada limited liability company doing business at 468 N. Camden Drive, 2nd floor, Beverly Hills, California 90210.

4. At all relevant times Daniel Lee (Lee) was an associate at IU who offered securities to the public.

5. Beginning in or about February 6, 2009, Bang, IU, and Lee offered and/or sold securities in the State of California in the form of membership units in IU to California investors. On February 6, 2009, Lee sent out an e-mail to California residents and consumers making said offers of IU membership units with an attached IU “Confidential Private Offering Memorandum” (Offering Memorandum) dated February 1, 2009. The Offering Memorandum stated that the purported purpose of the offering was to raise funds to purchase real property in Jackson County to, “achieve before tax returns between 15%-25% per annum to unit holders irrespective of movement of other asset classes.” The Offering Memorandum claimed that “[T]he fund has developed specific expertise in the trading of ‘index’ products, primarily those tracking global equity markets. The Fund places great emphasis on the concept of “market risk” and the dynamic correlative relationship or the ‘linked’ nature of world equity markets such as the NYSE, NASDAQ, S&P 500, Amex, FTSE, DAX, and NIKKEI.”

6. Certificates of search conducted by the Department of Corporations on July 7, 2009, revealed that records of the Department of Corporations up to and including June 10, 2009, did not disclose any filing for either IU or Bang under the Corporate Securities Law for any form of qualification authorizing the offer and sale of securities in the State of California.

7. The IU membership units are securities subject to qualification under section 25000 et seq. The IU membership units/securities were offered or sold in California as issuer transactions. The Department of Corporations has not issued a permit or other form of qualification authorizing Respondents to offer or sell securities in the State of California.

8. In a letter dated June 9, 2009, to the Department of Corporations, Bang admitted that IU had made a public offering of IU membership units via the February 6, 2009 e-mail by Lee. Bang also admitted at hearing that the February 6, 2009 offering by IU was delivered via e-mail to California residents and consumers by Lee. However, Bang asserted that Lee mistakenly sent the private IU Offering Memorandum to the public at large because Lee was unaware that such an offering was illegal under California State law. Bang stated that he was not aware the offering had been e-mailed to the general public by Lee and that the Offering Memorandum was originally intended to be shared only with clients of IU. Lee, who is still employed at IU, did not appear to testify at this hearing.

9. The evidence further established that Bang filed for bankruptcy protection in May 2002. Bang failed to disclose to investors in the Offering Memorandum that he filed bankruptcy in May 2002. The Offering Memorandum prominently features Bang as the CEO and Chief Manager of the IU fund. The Offering Memorandum states that the IU fund is the responsibility of Bang, and that he “controls the day-to-day operation of the firm.” Bang’s failure to disclose his bankruptcy in connection with the offer and/or sale of IU membership units constitutes an untrue statement or omission of material fact in the Offering Memorandum which was necessary not to mislead investors under section 25401.

LEGAL CONCLUSIONS

1. Section 25110 provides, in relevant part, as follows:

It is unlawful for any person to offer or sell in this state any security in an issuer transaction . . . unless such sale has been qualified under section 25111, 25112 or 25113 . . . or unless such security or transaction is exempted or not subject to qualification under Chapter 1 (Commencing with Section 25100) of this part

2. 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.

3. Section 25532, subdivision (a), provides in pertinent part, as follows:

If, in the opinion of the commissioner, (1) the sale of a security is subject to qualification under this 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 the 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 of 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.

4. Cause exists to uphold the desist and refrain order pursuant to sections 25532 and 25110, in that Respondents offered and/or sold IU membership units in California on February 6, 2009, without authorized qualification, or an exemption or exception, by reason of Factual Findings 1 through 9.

The Commissioner by a preponderance of the evidence established that Respondents offered securities to the public, i.e. IU membership units, in February 2009, without having such sale qualified under section 25110 or receiving prior authorization from the Department of Corporations to offer or sale securities in the State of California. Respondents have the burden of proving that it has an exemption or exception to section 25110 prior to offering or selling securities. Respondents presented no evidence of an exemption or exception possessed by IU or Bang.

Further Bang admitted at hearing that the February 2009 offering by IU was made, but asserted that an employee, Lee, was unaware of the impropriety of such an offering. Respondents' employee's lack of knowledge regarding the securities laws of the State of California does not provide an affirmative defense to the Commissioner's desist and refrain order. Consequently, the Commissioner's order was properly issued and thus, must be upheld.

5. Cause exists to uphold the Commissioner's May 19, 2009 desist and refrain order pursuant to sections 25532 and 25401, in that Respondent Bang failed to disclose to investors in the IU Offering Memorandum dated February 1, 2009, that he filed bankruptcy in May 2002. Said failure constitutes a misstatement and/or omission of material facts which a reasonable investor would have considered in deciding whether to invest in IU, by reason of Factual Findings 1 through 9.

Respondent Bang filed bankruptcy on May 31, 2002. Bang did not dispute the fact that he filed bankruptcy in 2002. He merely stated that the circumstances surrounding his bankruptcy resulted from family obligations which necessitated overwhelming expenditures that resulted in his filing bankruptcy.

Section 25401 provides that it is unlawful for any person to offer or sell a security in California by any means of written or oral communication which includes an untrue statement or omission of material fact necessary to make the communication not misleading. (Corp. Code, § 25401.) The courts have held that "a fact is material if there is a substantial likelihood that, under all circumstances, a reasonable investor would consider it important in reaching an investment decision." (*Insurance Underwriters Clearing House, Inc. v. Natomas Company* (1986) Cal.App.3d 1520, 1526.) Respondent Bang is the CEO and Chief Managing Officer of IU. The Offering Memorandum dated February 1, 2009, fails to mention Bang's 2002 bankruptcy even though Bang is prominently featured in the offering as the person responsible for managing the IU fund. The fact that Bang had filed bankruptcy seven years prior to the IU offering could have impacted an investor's decision in purchasing IU membership units.

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

The Desist and Refrain Order issued by the Commissioner of Corporations to IU Investments, LLC, Elijah Bhang aka Elijah Bang, and Daniel Lee is SUSTAINED.

IU Investments, LLC, Elijah Bhang aka Elijah Bang, and Daniel Lee's appeal is DISMISSED.

DATED: August 14, 2009

MICHAEL A. SCARLETT
Presiding Administrative Law Judge
Office of Administrative Hearings