

BEFORE THE
DEPARTMENT OF BUSINESS OVERSIGHT
STATE OF CALIFORNIA

In the Matter of the Desist and Refrain Order
Issued to:

EARL N. DAVENPORT,

Respondent.

OAH No. 2014070632

DECISION

The attached Proposed Decision of the Administrative Law Judge of the Office of Administrative Hearings, dated May 13, 2015, is hereby adopted by the Commissioner of Business Oversight as her Decision in the above-entitled matter with following technical and minor change pursuant to Government Code section 11517(c)(2)(C):

On the first page of the Proposed Decision, in the third line of the third paragraph, change "May 1, 2014" to "May 1, 2015".

This Decision shall become effective on

August 22, 2015

IT IS SO ORDERED this 23rd day of

July, 2015

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~~JAN LYNN OWEN~~

Commissioner of Business Oversight

BEFORE THE
DEPARTMENT OF BUSINESS OVERSIGHT
STATE OF CALIFORNIA

In the Matter of the Desist and Refrain Order
Issued to:

EARL N. DAVENPORT,

Respondent.

Case No. 9964

OAH No. 2014070632

PROPOSED DECISION

This matter came on regularly for hearing on November 10, 2014, April 1, 2015, and May 1, 2015, in Los Angeles, California, before H. Stuart Waxman, Administrative Law Judge, Office of Administrative Hearings, State of California.

Jan Lynn Owen, the Commissioner of Business Oversight of the State of California (Complainant or Commissioner) was represented by Afsaneh Eghbaldari and Robert R. Lux, Corporations Counsel.

On November 10, 2014, and April 1, 2015, Respondent Earl N. Davenport (Respondent or Davenport) appeared and represented himself. No appearance was made by or on behalf of Respondent on May 1, 2014, despite his having been properly served with notice of the date, time, and location of the hearing.

No evidence was taken on November 10, 2014, or April 1, 2015. On November 10, 2014, Respondent appeared too lethargic and somnolent to adequately represent himself. On April 1, 2015, Respondent was extremely agitated and overwrought, causing disruption to the proceeding and requiring the presence of one California Highway Patrolman and two building security guards to maintain the peace in the hearing room.

Oral and documentary evidence was received. The record was closed on May 1, 2015, and the matter was submitted for decision.

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FACTUAL FINDINGS

1. On June 4, 2014, the Commissioner, by the Deputy Commissioner of the Enforcement Division, Mary Ann Smith, issued a Desist and Refrain Order against Respondent, Advent Group, Inc. (Advent Group), Advent Group International, Property Coast 2 Coast, L.P. (PC2C), and I Squared Entertainment, L.P. (I Squared), for violation of Corporations Code section 25401. In so doing, the Commissioner ordered those entities to “desist and refrain from offering and selling securities in the state of California by means of any written or oral communication which includes an untrue statement of 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.” (Exhibit 4A.)

2. Of the five entities served with the Desist and Refrain Order, only Respondent requested a hearing. Accordingly, this Decision is issued as to Respondent only.

3. With certain exceptions, Complainant established the truth of the allegations contained in paragraphs 1 through 6(c) of the Desist and Refrain Order. Those allegations are repeated verbatim below, except where language within brackets makes the allegations more accurate and, together with the bracketed language, are incorporated herein as factual findings.

1. At all relevant times, Advent Group, Inc. (“Advent Group”) was a Nevada corporation doing business in California as Advent Group International (“Advent Group International”). [At all relevant times,] Advent Group and Advent Group International [were] located at 14545 Victory Blvd., Suite 401, Van Nuys, CA 91411.

2. At all relevant times, Property Coast 2 Coast LP (“PC2C”) was a California limited partnership located at 14545 Victory Blvd., Suite 401, Van Nuys, CA 91411.

3. At all relevant times, I Squared Entertainment, LP (“I Squared”) was a California limited partnership located at 14545 Victory Blvd., Suite 401, Van Nuys, CA 91411.

4. At all relevant times, Earl N. Davenport (“Davenport”) was the president of Advent Group, and a general partner and manager of PC2C and I Squared.

5. Beginning at least as early as 2009 and continuing . . . Davenport, Advent Group and Advent Group International offered or sold securities in the form of partnership units or interests in various different entities, including, but not limited to partnership units in PC2C and I Squared . . .

6. In connection with the offer or sale of these securities, Davenport, Advent Group, Advent Group International, PC2C and I Squared failed to disclose material facts, as follows:

(a) Davenport was convicted in the State of Tennessee of a felony offense of theft over \$10,000, in 2001;

(b) Pennsylvania Securities Commission issued a Cease and Desist Order to Davenport and Advent Group for violations of Pennsylvania securities laws in connection with the offer and sale of limited partnership interests in Changing the Game, LP, in September 2009; and

(c) Davenport was found guilty of one felony count of conspiracy to possess a controlled substance, to wit, cocaine, in the State of Washington in 2000.

Richard James Gatto

4. In October 2009, Richard James Gatto (Gatto) received a telephone call from someone identifying himself as Jim Morris (Morris) who told Gatto he represented Advent Group and PC2C. Morris solicited investments from Gatto in an apartment complex and sent offering materials to Gatto from an address in Van Nuys, California. Gatto subsequently made two investments in PC2C, one for \$8,000 in October or November, and one for \$12,000 later in November.

5. Around the time Gatto was solicited for and made the investments, no one told him about Respondent's felony conviction in Tennessee, the Cease and Desist Order from Pennsylvania, or Respondent's felony conviction in Washington. Gatto believes those facts would have been material to him in making the decision whether to invest, and he does not believe he would have invested had he been made aware of those facts.

6. Gatto never received any earnings on his investments, and he has not received a refund of his investments.

Sara Scribner

7. Sara Scribner (Scribner) is an enforcement attorney with the Texas State Securities Board. In 2010, in connection with an investigation of I Squared, Scribner acted in an undercover capacity as a potential investor.

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8. On May 28, 2010, Scribner received an unsolicited telephone call on her office's undercover line from an individual who identified himself as Jeremy and who claimed to be an "executive producer" with I Squared. Jeremy offered Scribner a securities offering in a family-oriented film. Scribner asked Jeremy to send him a book about the project. In response to that request, she received offering materials. The shipping label on the materials identified Jeremy as the sender and a return address on Van Nuys Boulevard in Sherman Oaks, California. Jeremy followed up on the offering materials with a telephone call to Scribner on June 7, 2010.

9. Scribner's research identified Karen Isaac as the Director of I Squared, a limited partnership. As of the limited partnerships' formation on December 23, 2009, its address was 14545 Victory Boulevard, Suite 401, Van Nuys, California 91411. Respondent was listed as the agent for service of process with the California Secretary of State.

10. The Texas State Securities Board had previously known Respondent to be an officer of Advent Group and Advent Group International. An individual from Advent Group International had previously made unsolicited telephone calls to Scribner on her office's undercover line offering securities in PC2C. While investigating that offering, the Texas State Securities Board discovered Respondent's criminal conviction in Tennessee and the Cease and Desist Order against him in Pennsylvania.

David Paul Billings

11. In approximately September 2009, David Paul Billings (Billings) received an unsolicited telephone call from Morris, who claimed to be the Director of Investment and a sales representative of Advent Group, Advent Group International, PC2C, I Squared, Kid's Crew, and Changing the Game, LP. Morris claimed all of the above companies were located in Van Nuys, California. Billings and his wife resided in Yakima, Washington.

12. Morris told Billings the companies were looking for private investors. Although they were looking for "accredited investors,"¹ they were willing to make an exception and allow Billings and his wife to invest even though they were not accredited investors. After discussing it with his wife, Billings decided to invest in one or more of the companies Morris represented.

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¹ 17 C.F.R. § 230.501(a).

13. A few days later, Respondent telephoned Billings to discuss the details of Billings' investment. Respondent told Billings he was the owner of Advent Group, Advent Group International, PC2C, and I Squared. There followed several telephone calls from Respondent and other sales representatives. Respondent told Billings the investments were safe and profitable, and that Respondent was successful. They planned that the money Billings invested would be used to purchase securities, specifically partnership units or interests in various companies, to purchase apartment buildings in the Van Nuys area. After three to five years of the companies' collecting rent and money from laundry and vending machines in the apartment buildings, investors would receive quarterly residual returns based on the number of partnership units each investor owned. Respondent also told Billings that I Squared planned to raise capital from private investors to produce a film.

14. Billings was concerned about investing his money in companies he knew little about, and he attempted to obtain more information about them and their owner. In his Declaration, Billings wrote:²

8. I told Davenport that I needed to know a lot more about him and his companies before my wife and I invested with him. It was very important to me to know the reputation and legitimacy of these companies and the people managing the investments. I also did a basic internet search of Davenport and his companies and did not find any adverse information.

9. Davenport assured me that his companies were legitimate and properly formed and would send me the private offering materials for the companies. Davenport further told me that his mother had invested in Property Coast 2 Coast, LP and she would "kick his ass if he [*sic*] lost anyone's investment money."

(Exhibit 6, pages 2-3.)

15. Billings was provided with offering materials for PC2C and I Squared, both located in Van Nuys, California.

16. Based on the representations of Respondent and others, Billings and his wife invested \$100,000 in PC2C by taking money from Billings' IRA account.

17. In February 2010, Respondent and Karen Isaac³ invited Billings and his wife to Van Nuys to show them the properties PC2C intended to purchase and to discuss the possibility of investing in other properties in Arizona. However, upon their arrival, they were not shown any properties. Instead, Respondent offered Billings an opportunity to invest in Kid's Crew which he said was part of I Squared.

² Billings' Declaration was admitted for all purposes pursuant to Government Code section 11514.

³ Billings understood Karen Isaac to be Respondent's fiancée.

18. In April 2010, based on assurances from Respondent and others, Billings purchased \$5,000 worth of units in Kid's Crew.

19. After he failed to receive any returns on his investments, Billings made several unsuccessful attempts to reach Respondent. As of December 2010, Respondent's telephone numbers and the companies' telephone numbers had been disconnected.

20. Thereafter, Billings learned of Respondent's criminal convictions in Tennessee and Washington, and the Cease and Desist Order in Pennsylvania. In his Declaration, Billings wrote:

17. Davenport and the companies should have disclosed Davenport's criminal history and the Pennsylvania Securities Commission Cease and Desist Order to me because these were facts that would have been very important to me in my decision of whether to invest. I would not have purchased these securities had I known about Davenport's criminal history or the Cease and Desist order.

(*Id.* at page 4)

LEGAL CONCLUSIONS

1. Cause does not exist to affirm the Desist and Refrain Order of June 4, 2014, against Respondent, pursuant to Corporations Code sections 25401 and 25532, as set forth in Findings 2 through 10.

2. Cause exists to affirm the Desist and Refrain Order of June 4, 2014, against Respondents, pursuant to Corporations Code sections 25401 and 25532, as set forth in Findings 11 through 20.

3. Corporations Code section 25401 states:

It is unlawful for any person, in connection with the offer, sale, or purchase of a security, directly or indirectly, to do any of the following:

(a) Employ a device, scheme, or artifice to defraud.

(b) Make an untrue statement of material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which they were made, not misleading.

(c) Engage in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person.

4. Corporations Code section 25532, subdivision (c) states:

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.

5. Complainant did not offer any evidence connecting Respondent to any communications with either Gatto or Scribner. Gatto was approached by an individual named Jim Morris; Scribner by an individual named Jeremy. No evidence was offered to show that either Morris or Jeremy was Respondent's agent or employee such that the doctrine of respondeat superior would make Respondent liable for their representations or omissions.

6. The only individual whom Complainant proved had contact with Respondent was Billings. Respondent failed to inform Billings of his two criminal convictions and the Cease and Desist Order imposed against him and Advent Group in Pennsylvania. That information was material to Billings' decision whether to invest in Respondent's companies. The Desist and Refrain Order shall be affirmed on that ground only.

ORDER

The Desist and Refrain Order of June 4, 2014, against Earl N. Davenport is affirmed.

Dated: May 13, 2015

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H. STUART WAXMAN
Administrative Law Judge
Office of Administrative Hearings