STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)))	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT C.A. No. 07-CP-40-3116
HENRY D. MCMASTER, in his official capacity as the SECURITIES COMMISSIONER FOR THE STATE OF SOUTH CAROLINA, Plaintiff, -vs- CAPITAL CONSORTIUM GROUP, INC.; 3 HEBREW BOYS, LLC; TONY POUGH; TIM MCQUEEN; JOSEPH BRUNSON; AND FIRST CITIZENS BANK AND TRUST COMPANY, INC., Defendants.	))))))))))))))))))	

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CLERK OF COURT
RICHLAND COUNTY

ORDER GRANTING PLAINTIFF'S MOTION FOR TEMPORARY INJUNCTION

This matter came before the Court pursuant to a motion for the temporary injunction (the "Motion") filed May 29, 2007 by the Plaintiff, Henry D. McMaster, as the Securities Commissioner for the State of South Carolina ("Plaintiff" or "State"). The Motion sought to enjoin defendants Capital Consortium Group, Inc.;[1] 3 Hebrew Boys, LLC; Tony Pough; Tim McQueen; and Joseph Brunson (collectively, "Defendants") from withdrawing, liquidating, transferring or otherwise having access to funds held at First Citizens Bank and Trust Company, Inc. (the "Funds"). The accounts in which the Funds currently are located (the "Accounts") are

[1] Plaintiff noted in the Motion that Defendant Capital Consortium Group was incorrectly identified as "Capital Consortium Group, Inc." rather than Capital Consortium Group, LLC." The Court takes judicial notice of the fact that Capital Consortium Group is a South Carolina limited liability company, and this Order shall be binding upon Capital Consortium Group, LLC accordingly.

identified in Exhibit "1" attached hereto and incorporated by reference herein. Plaintiff also sought an injunction prohibiting defendant First Citizens Bank and Trust Company Inc. ("First Citizens") from closing the Accounts or allowing anyone, including but not limited to Defendants, to have access to the Accounts during the pendency of this case. After notice duly having been provided to all parties, a hearing was held before the undersigned at 9:30 a.m. on May 31, 2007 in the Richland County Court of Common Pleas. Assistant Attorneys General Warren V. Ganjehsani and Tracy A. Meyers appeared for the Plaintiff. Stanley H. McGuffin, Esquire, appeared for First Citizens. Defendants were not represented at the hearing by counsel and did not make personal appearances.

GROUNDS FOR TEMPORARY INJUNCTION

"To obtain an injunction, the plaintiff must allege facts sufficient to constitute a cause of action for injunction and demonstrate the injunction is reasonably necessary to protect the legal rights pending in the litigation." Levine v. Spartanburg Regional Services District, Inc., 367 S.C. 458, 464, 626 S.E.2d 38, 41 (Ct. App. 2005). Obtaining an injunction requires the plaintiff to show that (1) it would suffer irreparable harm if the injunction is not granted; (2) it will likely succeed on the merits of the litigation; and (3) there is an inadequate remedy at law. Grosshuesch v. Cramer, 367 S.C. 1, 4, 623 S.E.2d 833, 834 (2005). "When seeking a preliminary injunction, the plaintiff need not prove an absolute legal right; the plaintiff need only present a fair question to raise as to the existence of such a right." Levine, 367 S.C. at 465, 626 S.E.2d at 42 (internal quotations omitted). In considering whether to grant an injunction, the court should balance the equities of the opposing parties on the particular facts of the case to determine which side is more entitled to relief. Levine, *supra*.

FINDINGS OF FACT

After consideration of the State's motion and the arguments presented by the parties at the hearing, I find and conclude as follows:

1. All parties were properly served notice of the hearing, First Citizens through its counsel and all other Defendants through a representative who was authorized to accept service on Defendants' behalf.

2. The State has put forth evidence that Defendants, individually and by and through their agents and representatives, have been holding seminars in several states and foreign countries at which they have been offering an investment scheme ("Investments") to the public, and there is evidence that the Investments, as described at these seminars, constitute "securities" under South Carolina law.

3. The State provided a witness at the hearing who testified that Defendants are not licensed or registered to sell securities in South Carolina, and that the Investments offered by Defendants are not and have never been registered for sale in or from the State of South Carolina. State witnesses further testified that Defendants have accumulated several million dollars from the unlawful sale of the Investments, and these monies make up the Funds currently deposited in the First Citizens Accounts in Columbia, South Carolina.

4. Defendants offered no testimony at the hearing.

5. The numerous investors who have entrusted Defendants with sizable sums of money have suffered and will continue to suffer irreparable harm if the Defendants continue to pilfer the Funds in the Accounts during the pendency of this case. Defendants' investment scheme requires investors to leave their invested money in place for several months or even

years before being allowed to "cash out" the promised returns. Consequently, investors lack adequate means to control or even monitor Defendants' whittling away the Funds in the interim.

6. Defendants spent over two million dollars of investor funds in a matter of a few short weeks after the Accounts were opened, and these funds were used in a manner that is inconsistent with the representations made to investors and in violation of securities law. At the rapid pace Defendants are spending the Funds and depleting the Accounts, there could be no money left for the investors to recover if a temporary injunction is not issued immediately.

7. Based on the forgoing, I find Plaintiff has demonstrated that irreparable harm will result if an injunction is not granted.

8. Defendants' acts as alleged by the State at the Motion hearing constitute violations of South Carolina securities law. The State has further alleged Defendants have committed fraud upon their investors. On both issues, the State has put forth evidence demonstrating a likelihood of success on the merits.

9. Plaintiff argues Defendants' entire investment operation constitutes an unlawful pyramid or Ponzi scheme designed to defraud investors. At the hearing Plaintiff offered testimony that (1) Defendants represent to investors that the investor funds will gain profits through investment in foreign exchanges and (2) that none of the Funds has been invested in any foreign exchange. Plaintiff further alleges Defendants have violated and continue to violate the law by failing to register their Investments as securities, and by offering and selling securities in South Carolina to residents of this State and other states without being properly licensed or registered to do so. Finally, Plaintiff argues Defendants have committed and are committing securities fraud by failing to disclose to potential investors that Pough is a convicted embezzler,

since his status as a felon is a material fact of which potential investors must be informed in connection with the offer, sale, or purchase of the Investments.

10. None of Plaintiff's arguments were controverted or rebutted by Defendants at the hearing.

11. Based upon the testimony and evidence presented by Plaintiff, I find that Plaintiff has shown a likelihood of success on the merits.

12. Plaintiff argues a temporary injunction is needed in this case because the Accounts consist of pooled investor funds that must be preserved until the case can be heard on the merits. An equitable injunction rather than a remedy at law is necessary where ownership of the property at issue in a case is disputed or unclear. Grosshuesch v. Cramer, 367 S.C. 1, 623 S.E.2d 833 (2005). Preservation of the property at issue until the matter has been adjudicated is the "quintessential hallmark of an injunction," whereas the legal remedy of attachment involves the court's taking jurisdiction of defendant's assets as security for a judgment that may be obtained by plaintiff. Grosshuesch, 367 S.C. at 1, 623 S.E.2d at 835.

13. At the hearing Plaintiff demonstrated the Accounts do not contain Defendants' assets, instead they contain funds belonging to all the investors that have been pooled together and are no longer traceable to any individual investor. Further, Plaintiff is not seeking security for a judgment, but preservation of the investors' money until such time as the Court and/or a receiver can determine an equitable distribution of the Funds among the affected investors. Consequently, I find attachment provides an inadequate remedy at law and an injunction is the appropriate relief.

14. Plaintiff shall not be required to post a bond or other security to obtain the injunction sought in this case. Rule 65(c), SCRCP (providing that "[n]o such security shall be required of the State or of an officer or agency thereof").

IT IS THEREFORE ORDERED THAT:

(1) The State of South Carolina's Motion for Temporary Injunction is hereby GRANTED;

(2) Defendants are hereby enjoined from withdrawing, liquidating, transferring or otherwise having access to the Funds during the pendency of this case, irrespective of the Funds being moved by First Citizens to a general ledger account as set forth in paragraph (3) below;

(3) First Citizens is hereby ordered to maintain the Funds in a manner to safeguard against any efforts by Defendants to move, liquidate or dissipate the Funds during the pendency of this case. In furtherance of this goal, First Citizens is authorized and directed to transfer the Funds from the Accounts to a single general ledger account and assign it a general ledger number. Further, First Citizens is authorized and directed to invest the Funds in a market rate six month certificate of deposit (or its equivalent), subject to renewal upon maturity and pending further order by this Court. First Citizens shall maintain records to adequately account for the balances in the Accounts as of the date of any transfer to a general ledger account and any interest thereafter earned on the Funds. The Court notes that prior to entry of a Temporary Restraining Order on this case on May 21, 2007, Defendants had directed that only a portion of the Funds be invested by First Citizens in interest bearing instruments. Consequently, the court finds that maintenance of the Funds in the matter prescribed herein to be in the best interest of the parties to this action and the public at large;

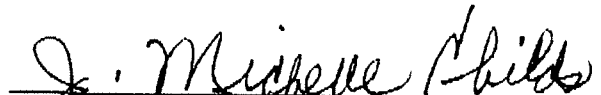
(4) First Citizens is prohibited from allowing anyone, including but not limited to Defendants, to move, liquidate or dissipate the Funds during the pendency of this case except as authorized by Item #3 above or further order of the Court;

(5) The injunction granted is binding upon the Defendants, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order for temporary injunction by personal service or otherwise;

(6) This temporary injunction is to remain in effect until such time as there has been a final adjudication on the merits of this case; and

(7) Plaintiff is not required to post a bond or other security as a result of the granting of a temporary injunction in this case.

AND IT IS SO ORDERED.



J. Michelle Childs
Presiding Judge, Fifth Judicial Circuit

June 22, 2007
Columbia, South Carolina

EXHIBIT 1

1. Account 083125048501 located at the First Citizens Bank, 1230 Main Street, Columbia, South Carolina 29202.

2. Account 083125049301 located at the First Citizens Bank, 1230 Main Street, Columbia, South Carolina 29202.

3. Account 083125024601 located at the First Citizens Bank, 1230 Main Street, Columbia, South Carolina 29202.

4. Account 083125011301 located at the First Citizens Bank, 1230 Main Street, Columbia, South Carolina 29202.

5. Account 083125047701 located at the First Citizens Bank, 1230 Main Street, Columbia, South Carolina 29202.