

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 08-81565-CIV-HURLEY/HOPKINS

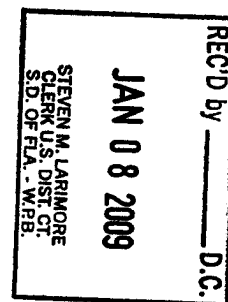
SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

v.

CREATIVE CAPITAL CONSORTIUM, LLC,  
A CREATIVE CAPITAL CONCEPTS, LLC, and  
GEORGE L. THEODULE,

Defendants.



**ORDER GRANTING PRELIMINARY INJUNCTION  
AND OTHER RELIEF AGAINST ALL DEFENDANTS**

THIS CAUSE comes before the Court on Plaintiff's Motion for Entry of Order of Preliminary Injunction and Other Relief [DE 17] against Defendants Creative Capital Consortium, LLC and Creative Capital Concept\$, LLC, filed on January 6, 2009, and on the show cause hearing held on January 6, 2009 [DE 19] to determine whether to grant the Plaintiff's application for a preliminary injunction as to Defendant George L. Theodule. I have reviewed the record and am advised in the premises.

**Procedural Background**

On December 29, 2008, the Securities and Exchange Commission (the SEC) filed a complaint [DE 1] against Defendants Creative Capital Consortium, LLC, A Creative Capital Concept\$, LLC, and George L. Theodule. With the complaint, the SEC also filed an emergency

motion to appoint a receiver [DE 2] and an emergency motion for a temporary restraining order and other emergency relief [DE 5]. On that same day, this Court entered a temporary restraining order and other emergency relief [DE 7], and appointed Jonathan E. Pearlman as a receiver [DE 8] for Creative Capital Consortium, LLC and Creative Capital Concept\$, LLC. On December 31, 2008, this Court entered an order [DE 14] amending the previous orders [DE 7 and 8] to include United Investment Club, LLC, Reverse Auto Loan, LLC, and Sancal Investment and Financial Services, Inc., as entities related to the corporate Defendants. On January 6, 2009, the SEC filed a Motion for a Preliminary Injunction against the corporate Defendants [DE 17] with a Consent of Defendants Creative Capital Consortium, LLC and A Creative Capital Concept\$, LLC, to Order of Preliminary Injunction and Other Relief [DE 17-2]. The Consent to the proposed injunction was signed on behalf of the corporate Defendants by Jonathan E. Pearlman, the Court-appointed receiver for the corporate Defendants.

Pursuant to the Orders entered December 29, 2008 [DE 7] and December 31, 2008 [DE 13], and Rule 65, Fed.R.Civ.P., a hearing was held on January 6, 2009 to determine whether to issue a Preliminary Injunction against George L. Theodule.<sup>1</sup> In addition to the exhibits offered in support of the SEC's motions [DE 5 and 17] and other evidence previously filed, the following witnesses gave testimony on behalf of the SEC: Jonathan E. Pearlman, the Court appointed receiver; Neptime Dieujuste, a financial investigator for the Florida Office of Financial Regulation; William Sabarese, and alleged victim of the alleged "Ponzi" scheme; and Kathleen Strandell, and Securities and Exchange Commission enforcement accountant.

### **Legal Standard**

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<sup>1</sup>In addition to the Consent [DE 17-2] to the Injunction by the Receiver on behalf of the corporate Defendants, the Court also relied upon the evidence presented at the hearing against the corporate Defendants in issuing this Order.

Under Section 21(d) of the Exchange Act, 15 U.S.C. § 78u(d)(1), a District Court may issue an injunction or restraining order upon a proper showing by the SEC, when it appears to the SEC that any person is engaged or is about to engage in acts or practices constituting a violation of securities laws. The SEC is entitled to preliminary injunction against alleged securities laws violator, when it establishes a prima facie case of previous violations of federal securities laws, and a reasonable likelihood that the wrong will be repeated. *SEC v. Management Dynamics, Inc.*, 515 F.2d 801, 807 (2d Cir. 1975).

In *SEC v. Management Dynamics, Inc.*, the Second Circuit held that the SEC's statutory remedy of injunction, "obviate[s] the need for a finding of irreparable injury at least where the statutory prerequisite the likelihood of future violation of the securities laws has been clearly demonstrated." *Id.* at 807. Therefore, the "SEC appears in these proceedings not as an ordinary litigant, but as a statutory guardian charged with safeguarding the public interest in enforcing the securities laws." *Id.*<sup>2</sup> See also *Hecht Co. v. Bowles*, 321 U.S. 321, 331 (1994) (As injunction is a statutory remedy under the Emergency Price Control Act of 1942, the propriety of granting injunctive relief under the Act is measured by standards of public interest rather than requirements of private litigation).

The Eleventh Circuit has enunciated similar standards for awarding the SEC preliminary

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<sup>2</sup>Typically, to prevail on a motion for a preliminary injunction, plaintiffs must establish four element justifying issuance of a preliminary injunction: (1) substantial likelihood of success on the merits; (2) immediate and irreparable injury absent injunctive relief; (3) the threatened injury to the movant outweighs whatever damage the proposed injunction may cause the opposing party; and (4) if issued, the injunction would not be adverse to the public interest. *Klay v. United Heathgroup, Inc.*, 376 F.3d 1092, 1097 (11th Cir. 2004). I conclude that the SEC has also satisfied its burden for a preliminary injunction under this standard.

injunctions. *Securities and Exchange Commission v. Blatt*, 583 F.2d 1325 (5<sup>th</sup> Cir. 1978)<sup>3</sup> sets forth several factors in determining whether a preliminary injunction should be issued:

Such factors include the egregiousness of the defendant's actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, the sincerity of the defendant's assurances against future violations, the defendant's recognition of the wrongful nature of his conduct, and the likelihood that the defendant's occupation will present opportunities for future violations.

583 F.2d at 1334, n.29.

In addition, it is appropriate to award a preliminary injunction when the SEC has demonstrated "a pattern of past and present questionable business practices," and when it is likely that the defendants will "remain in a position where opportunities for future violations of the securities laws will be abundant." *See SEC v. Carriba Air, Inc.*, 681 F.2d 1318, 1322 (11<sup>th</sup> Cir. 1982). Further, to grant a preliminary injunction in a securities case, a plaintiff must provide, among other elements, "positive proof" that the defendant will likely violate securities laws in the future. *See SEC v. ETS Payphones, Inc.*, 408 F.3d 727, 733 (11<sup>th</sup> Cir. 2005).

The SEC has established a prima facie showing of violations of the securities laws as alleged in its Complaint, namely, that Defendants had made (1) a misrepresentation or omission (2) that is material (3) in connection with the purchase or sale of a security (4) made with scienter (5) during the use of interstate commerce. *See SEC v. Kirkland*, 521 F.Supp.2d 1281, 1297 (M.D. Fla. 2007). It has also shown a likelihood that the Defendants will violate securities laws in the future.

The SEC has put forth evidence in the form of declarations, affidavits, live testimony, banks

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<sup>3</sup>In *Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11<sup>th</sup> Cir. 1981), the Eleventh Circuit adopted as precedent the decisions of the Fifth Circuit prior to October 1, 1981.

statements, leases, and copies of the Defendant's "Business Plan."<sup>4</sup> The evidence supports the SEC's claims that the Defendants solicited investments by guaranteeing prospective investors a 100% return on their investment within 90 days based upon the successful trading of stocks and options. Despite these representations to investors, over 97% of the total funds deposited in Defendants' accounts collectively were lost through unsuccessful trading, according to the Declaration and live testimony of Ms. Strandell.

For the foregoing reasons, it is appropriate to issue a preliminary injunction against Creative Capital Consortium, LLC, A Creative Capital Concept\$, LLC, and George L. Theodule (collectively, "the Defendants") barring further violations of the securities laws; freezing assets of the Defendants; preserving their records, and repatriating funds.

I.

**PRELIMINARY INJUNCTION**

IT IS ORDERED AND ADJUDGED that, pending resolution of this case on the merits, the Defendants, their directors, officers, agents, servants, employees, attorneys, and those persons in active concert or participation with them, and each of them, are hereby restrained and enjoined from:

**Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5**

Directly or indirectly, by use of any means or instrumentality of interstate commerce or of the mails, or of any facility of any national securities exchange, in connection with the purchase or sale of any securities, knowingly or recklessly: (1) employing devices, schemes or artifices to

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<sup>4</sup>At the preliminary injunction stage, a district court may rely on affidavits and hearsay materials which would not be admissible evidence for a permanent injunction, if the evidence is appropriate given the character and objectives of the injunctive proceeding. *Levi Strauss & Co. v. Sunrise Intern. Trading Inc.*, 51 F.3d 982, 985 (11<sup>th</sup> Cir. 1995).

defraud, (2) making untrue statements of material facts and omitting to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or (3) engaging in acts, practices and courses of business which have operated, are now operating or will operate as a fraud upon the purchasers of such securities in violation of Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5] thereunder.

II.

**ASSET FREEZE**

IT IS FURTHER ORDERED AND ADJUDGED that, pending resolution of this case on the merits, the Defendants, their directors, officers, agents, servants, employees, attorneys, depositories, banks, and those persons in active concert or participation with them, and each of them, who receive notice of this order by personal service, mail, facsimile transmission or otherwise, except the Receiver, be and hereby are, restrained from directly or indirectly, transferring, setting off, receiving, changing, selling, pledging, assigning, liquidating or otherwise disposing of, or withdrawing any assets or property owned by, controlled by, held for the benefit of the Defendants or in the possession of, including, but not limited to, cash, free credit balances, fully paid for securities, and/or property pledged or hypothecated as collateral for loans.

III.

**ACCOUNTING IDENTIFICATION OF ACCOUNTS BY THEODULE**

IT IS FURTHER ORDERED AND ADJUDGED that, if he has not already done so, Theodule shall make his sworn accounting required of him, and serve and file such accounting within five business days of the issuance of this Order.

IV.

**RECORDS PRESERVATION**

IT IS FURTHER ORDERED AND ADJUDGED that, pending resolution of this case the Defendants, their directors, officers, agents, servants, employees, attorneys, depositories, banks, and those persons in active concert or participation with any one or more of them, and each of them, be and they hereby are restrained and enjoined from, directly or indirectly, destroying, mutilating, concealing, altering, disposing of, or otherwise rendering illegible in any manner, any of the books, records, documents, correspondence, brochures, manuals, papers, ledgers, accounts, statements, obligations, files and other property of or pertaining to the Defendants wherever located, until further Order of this Court.

**V.**

**REPATRIATION ORDER**

IT IS FURTHER ORDERED AND ADJUDGED that the Defendants, their directors, officers, agents, servants, employees, attorneys, depositories, banks, and those persons in active concert or participation with any one or more of them, and each of them, shall:

- (A) immediately take such steps as are necessary to repatriate to the territory of the United States all funds and assets of investors described in SEC's Complaint in this action which are held by them or are under their direct or indirect control, jointly or singly, and deposit such funds into the Registry of the United States District Court, Southern District of Florida; and
- (B) provide the SEC, the Receiver, and the Court a written description of the funds and assets so repatriated.

**VI.**

**SURRENDER OF PASSPORT**

IT IS FURTHER ORDERED AND ADJUDGED that if he has not already done so, Theodule shall immediately surrender all passport(s) issued to him to the Clerk of the Court and be barred from applying for or accepting any additional passport(s), and is barred from traveling outside the United States, pending the resolution of this case on the merits.

**VII.**

**RETENTION OF JURISDICTION**

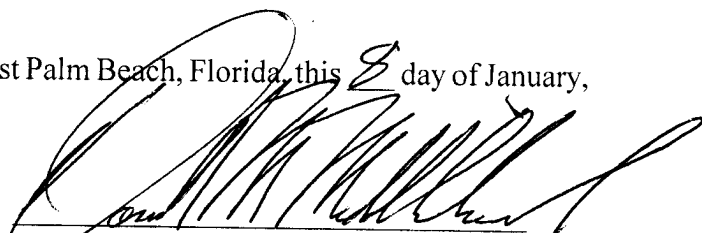
IT IS FURTHER ORDERED AND ADJUDGED that this Court shall retain jurisdiction over this matter and the Defendants in order to implement and carry out the terms of all Orders and Decrees that may be entered and/or to entertain any suitable application or motion for additional relief within the jurisdiction of this Court, and will order other relief that this Court deems appropriate under the circumstances.

**VIII.**

**AUTHORITY OF RECEIVER**

IT IS FURTHER ORDERED AND ADJUDGED that the Preliminary Injunction does not apply to or limit any power, duty, or authority of the Receiver to administer and manage the business affairs, marshal and safeguard the assets, and take whatever actions are necessary for the protection of the Creative Capital Defendants' investors.

DONE AND ORDERED in chambers in West Palm Beach, Florida, this 8 day of January, 2009.

  
DONALD M. MIDDLEBROOKS  
UNITED STATES DISTRICT JUDGE

Copies to counsel of record