

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 08-CV-81565-HURLEY/HOPKINS

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

**CREATIVE CAPITAL CONSORTIUM, LLC,
A CREATIVE CAPITAL CONCEPT\$, LLC, and
GEORGE L. THEODULE,**

Defendants.

**PLAINTIFF’S STATEMENT OF UNDISPUTED MATERIAL
FACTS IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

Pursuant to Southern District of Florida Local Rule 7.5.C, Plaintiff Securities and Exchange Commission files this statement of material facts as to which there is no genuine dispute in support of its summary judgment motion against Defendant George I. Theodule.

The Defendants

1. A Creative Capital Concept\$ (“ACCC”) is an inactive Florida limited liability company organized in November 2007. [Theodule’s Answer, DE 23, at ¶5; ACCC Certified Corporate Record attached as Exhibit 1]. Theodule owned ACCC was its manager, along with two other individuals. [Theodule’s Answer, DE 23, at ¶5 (admitting he was a manager); Exhibit 1; Florida Department of State, Division of Corporations fictitious name record (listing Theodule as owner), Exhibit 27]. ACCC was a so-called “investment group,” which Theodule used to raise funds from investors until he formed Creative Capital Concept\$, LLC in January 2008. [Testimony Transcript of Berthrum Brewster, attached as Exhibit 3 at pp. 33:22-34:22; Declaration of William P. Sabarese, attached as Exhibit Ex. 4 at ¶¶3-4, 8-10 and Exhibits A, B and C attached thereto].

2. Creative Capital Consortium, LLC (“CCC”) is a Florida limited liability company organized in January 2008 with its principal place of business in Lake Worth, Florida. [Theodule Answer, DE 23, at ¶6; CCC Certified Corporate Record attached as Exhibit 5]. CCC was an investment organization that became the primary entity through which Theodule raised investor funds and transacted business with investment clubs. [Theodule’s Statement of Facts in Support his Summary Judgment Motion, DE 105, at pg.1, ¶1; pg. 4, ¶1; Ex. 3 at pp. 33:22-34:22; Declaration of Evelyn Metellus, attached as Exhibit 6 at ¶¶2-3; 8, 11]. Theodule was CCC’s President, CEO, and sole proprietor. [CCC Business Plan Section 2.1, attached as Exhibit 9 and Exhibit A thereto; authenticated in Exhibit 9 Affidavit and at Exhibit 11, 34:24-35:21, 56:11-57:2; Theodule business card, attached as Exhibit 4 and Exhibit A thereto, authenticated in Exhibit 4]. He was also CCC’s owner. [Florida Division of Corporations Fictitious Name Record, Exhibits 28 & 29].

3. George I. Theodule currently resides in Loganville, Georgia, where he relocated from Wellington, Florida in September 2008. [Theodule Answer, DE 23, at ¶7; Lexis/Nexis Search Record of George L. Theodule addresses attached as Exhibit 7; Ex. 3 at p. 123:11-16]. He was the managing member of ACCC, the sole member and manager of CCC, and solicited investors for both of these companies. [Ex. 4 at ¶¶3-9; Ex. 5; Ex. 6 at ¶¶2-6, 8-10; Declaration of Collin Whitehall, attached as Exhibit 8 at ¶¶3-6; Declaration of Neptime Dieujuste, attached as Exhibit 9 at ¶21 and Exhibit A attached hereto at §2.1].

The Defendants’ Investment Group

4. From at least November 2007 until approximately January 2008, Theodule solicited investors to invest through ACCC and CCC, which were purportedly “investment groups.” [Ex. 4 and Exhibit C thereto].

5. Through ACCC and CCC, Theodule offered investors the opportunity to invest in stocks, bond, options, and other securities. [*Id.*].

6. The Defendants primarily targeted prospective investors in the United States Haitian community. [Ex. 3 at pp. 57:5-58:3; Ex. 4 at ¶14; Ex. 9 at ¶4].

7. Theodule ingratiated himself with investors by claiming he had recently decided to offer his investment expertise to help build wealth in the Haitian community. [Theodule Answer, DE 23, at ¶10; Ex. 3 at pp. 49:13-15, 81:8-19, 101:11-20, 172:3-173:5; Declaration of Carola Timothee, attached as Exhibit 10 at ¶7].

8. Theodule also told investors he used part of his trading profits to fund start-up businesses in the Haitian community, as well as business projects in Haiti and Sierra Leone. [Theodule Answer, DE 23, at ¶10; Ex. 3 at pp. 49:16-17, 81:8-19, 101:11-20, 172:3-173:5; Ex. 12 at ¶15].

9. The Defendants primarily attracted investors through word-of-mouth, and Theodule solicited investors during face-to-face meetings. [Ex. 3 at pp. 52:4-24, 62:17-64:18; Ex. 4 at ¶¶3-6; Ex. 6 at ¶¶2-5; Ex. 9 at ¶¶5-6; Theodule's Statement of Facts in Support his Summary Judgment Motion, DE 105, at pg.5, ¶5 ("Theodule would meet with companies and potential investors regarding investment opportunities.")].

10. Theodule touted his investment experience and trading acumen to prospective investors. [CCC Business Plan Section 2.1, attached as Exhibit 9 and Exhibit A thereto; authenticated in Exhibit 9 Affidavit]. CCC's business plan distributed to investors stated that Theodule "brings over 25 years of experience in the world of finance and sales. He also served as the Finance Director of several large companies and has significant expertise in sales. As the sole

proprietor of CCC, Mr. Theodule brings over 20 years experience as an investor in the stock market and other business ventures.” *Id.*

11. Theodule told prospective investors that he would double their money within 90 days. [Ex. 11, at 58:4-59:1, 61:22-64:4; Ex. 4 at ¶5] [Ex. 6 at ¶ 4; Ex. 8 at ¶3; Ex. 9 at ¶6; Ex. 14, Yolette Williams deposition, at 33:10-34:22; Ex. 22 at ¶ 4; Ex. 23 at ¶¶ 4,7].

12. Theodule typically depicted his investment plan and purported profits trading stocks and options on dry erase boards or flip charts. [Ex. 3 at pp. 61:14-23, 62:11-16].

13. Theodule routinely boasted to investors about CCC’s high rates of return, and stressed the need to begin investing as soon as possible. [Ex. 6 at ¶¶3-5, 7-8]. For example, he told one investor he had made millionaires out of a significant number of people in the time it had taken her to decide to invest, and pressured her to liquidate the equity in her home to invest with him. [*Id.* at ¶¶3, 7, 13-15].

14. Theodule’s presentations to prospective investors also emphasized the safety and security of investing with them. [Ex. 4 at ¶5; Ex. 6 at ¶¶4, 6, 9-10; Ex. 8 at ¶5]. Theodule and his Companies guaranteed investors 100% returns with no risk, and claimed to invest in the stocks and options of well-known companies such as Google, John Deere, Monsanto, Best Buy, GameStop, and others. [Ex. 3 at p. 51:3-6; Ex. 4 at ¶5; Ex. 6 at ¶¶4, 6, 9; Ex. 8 at ¶¶3, 5].

15. Theodule told investors to put their trust in him and guaranteed the safety of their investment. [Ex. 12 at ¶18].

The Defendants Raised Funds Through Investment Clubs

16. To add to investors’ sense of security, Theodule directed prospective investors to form “investment clubs” through Smart Investment Management Services, LLC (“SIMS”), which

he told prospective investors was a self regulatory agency. [Ex. 3 at pp. 36:1-42:13; Ex. 8 at ¶¶7-13].

17. Theodule told prospective investors that SIMS would protect them by independently verifying their investment deposits. [*Id.*].

18. In reality, SIMS was a private company created by Theodule's brother and run by a former CCC employee, and not a regulatory entity. [Theodule Answer, DE 23, at ¶12; Ex. 3 at pp. 36:21-38:20, 41:11-44:20; Exhibit 13, Kathryn Parker Deposition, at 18:17-19].

19. The investment clubs did not operate independently of Theodule, investor funds placed with investment clubs were placed solely with Theodule and CCC, and Theodule misappropriated investor funds and commingled them with CCC funds. [Ex. 17 at 38, 42-43, 56-57, 64-65; Ex. 18 at 42-43; Ex. 2 at ¶¶9-11].

20. The investment clubs pooled investor funds and sent them to CCC for a 90-day period, during which Theodule purportedly traded stocks and options on behalf of the investment club members. [Ex. 3 at pp. 49:18-51:2, 66:16-67:23; Ex. 6 at ¶¶11, 15; Ex. 8 at ¶7; Ex. 10 at ¶4; Ex. 17 at 56-60].

21. The investment club members did not participate in making investment decisions, rarely had club meetings, and deposited funds exclusively with the Defendants. [Ex. 3 at pp. 160:20-161:7, 162:6-163:20; Ex. 4 at ¶10].

22. The investment clubs typically required a minimum investment of \$1,000 per investor, which the investor could not withdraw for the 90-day investment period. [Ex. 4 at ¶ 8 and Exhibit B attached thereto; Ex. 6 at ¶17; Ex. 8 at ¶4; Ex. 9 at ¶¶6-7].

23. The investment clubs deposited the investors' funds into their own bank accounts, pooled the funds, and remitted the money to CCC, minus a 10% club commission. [Ex. 3 at pp. 59:1-61:25].

24. Thus, the investment clubs served principally as vehicles to funnel funds to Theodule and CCC. [Ex. 3 at pp. 67:16-67:23, 82:1-87:25 and Exhibit 4 attached thereto, 90:5-91:2; Ex. 8 at ¶¶7-14; Ex. 10 at ¶¶2-5, 12-21 and Exhibits A, B, and C attached thereto].

The Investor Group Agreements

25. Investors entered into a so-called "Investor Group Agreement" with CCC, whereby they authorized Theodule to serve as their agent and attorney-in-fact, to, among other things, "buy and sell and stocks, bonds, options, and other securities, including short sells, on margin or in a cash account." [Exhibit 4 and Exhibit C thereto].

26. Theodule signed the Investment Group Agreement on behalf of CCC. [*Id.*; Exhibit 11, Investor William Sabarese hearing testimony, at 63:15-64:4].

27. The Investment Group Agreement states that the investor's "initial investment is guaranteed zero loss after 90 days of start-up." [Exhibit 4, Sabarese Declaration, and Exhibit C thereto; Exhibit 11 at 65:14-65:6 (Sabarese testimony at Show Cause Hearing)].

Investors' Contributions

28. At the end of the 90-day investment period, when the Defendants had purportedly doubled the investment amount, they returned what they claimed were the principal and profits back to the investment clubs, minus a 40% commission on the profits. [Ex. 3 at pp. 74:12-80:23 and Exhibit 3 attached thereto].

29. Prior to distributing the proceeds back to the investors, the investment clubs typically charged a second 10% commission on the principal. [Ex. 3 at p. 76:1-20 and Exhibit 3 attached thereto].

30. During the course of the investment scheme, the Defendants raised approximately \$63 million from investors nationwide. [Receiver's Affidavit, Exhibit 2, at ¶9(b); Theodule Answer, DE 23, at ¶11].

31. Of the \$63 million Theodule raised, he:

a. Diverted approximately \$24 million to third parties, including his wife and relatives. [Receiver's Affidavit, Exhibit 2, at ¶9(b)(i)]. This amount also includes \$122,000 in transfers to SIMS. [*Id.*];

b. Misappropriated approximately \$20 million to his personal bank and brokerage accounts [*Id.* at ¶9(b)(ii)]. This amount includes \$2.1 million to his personal bank accounts, his cash withdrawals of more than \$1.4 million, more than \$700,000 for personal expenses, including luxury automobiles, credit card bills, a wedding, and travel. [*Id.*]. This amount also includes \$18.1 million, which Theodule transferred to his personal brokerage accounts – all of which was lost in Theodule's options trading. [*Id.*]; and

c. Transferred approximately \$19 million to investment clubs and/or individual investors. [*Id.* at ¶9(b)(iii)].

32. Theodule traded \$18.1 million of the \$63 million he raised, and lost 98% of that. [*Id.* at ¶9(b)(ii), ¶10; Theodule Statement of Facts In Support of Summary Judgment, DE 90, at pg. 4, ¶1]. He experienced a net trading loss from at least as early as November 2007 through December 2008. [Ex. 2, at ¶10; Theodule Statement of Facts In Support of Summary Judgment, DE 90, at pg. 4, ¶1; Theodule's Answer, DE 23, at ¶4 (admitting a net trading loss)].

33. In contrast to the actual heavy losses, CCC prepared and/or sent account statements for investors showing significant investment growth. For example, CCC's January 2008 account statements for one investor showed that his \$1,000 initial investment had grown to \$1,750 just one month after investing, and had doubled to \$2,000 within two months. [Exhibit 4, at ¶¶10-13 and Exhibit F thereto]. In August 2008, CCC sent another investor an account statement showing that his \$10,000 investment had appreciated to \$20,000 within three months. [Exhibit 8, ¶ 16, at Exhibit A thereto].

34. Theodule used \$19.1 million of new investor funds to pay existing investors' purported returns. [Exhibit 2, at ¶9(b)(iii), ¶11].

35. When more recent investors attempted to withdraw their funds after the 90-day investment period, CCC did not return them. [Ex. 3 at pp. 127:20-129:1; Ex. 4 at ¶¶15-17; Ex. 6 at ¶¶18-22; Ex. 8 at ¶¶17-19; Ex. 9 at ¶¶35-44; Ex. 10 at ¶¶29-32; Exhibit 11, Sabarese testimony, at 71:14-72:13; Ex. 12, at ¶31].

36. In December 2008, Theodule sent investors a newsletter that stated "rest assured that your money is secure and not lost." [Ex. 12, at ¶¶39-40 and Exhibit G thereto].

37. Theodule's December 2008 newsletter told investors that "The monies that you have already invested will maintain its gain as long as you opt to not withdraw for one year." [Ex. 12 and Exhibit G thereto]. The newsletter also stated that "CCC is growing strong and rest assured that you have invested with a capable group." [*Id.*].

The Defendants' Misrepresentations and Omissions

38. Theodule made numerous material misrepresentations and omissions regarding CCC's business, Theodule's stock trading, and the use of investor funds. [Ex. 3 at p. 52:12-24; Ex. 4 at ¶¶6-7; Ex. 6 at ¶¶4-9; Ex. 9 at ¶¶35-44]

39. For example, Theodule's claim of success trading stocks and options was demonstrably false. [Ex. 2 at ¶¶9-11]. Of the more than \$18 million deposited in brokerage accounts Theodule controlled, he lost approximately 98% of those funds trading stocks and options. [Ex. 2 at ¶10]. In fact, Theodule consistently lost money trading in those accounts after November 2007, and never generated net trading profits. [Ex. 2 at ¶10(b); Theodule's Answer, DE 23, at ¶4 (admitting a net trading loss)].

40. CCC and Theodule hid those losses from investors, sending account statements showing high returns [Exhibit 4, at ¶¶10-13; Exhibit 8, ¶ 16, at Exhibit A thereto], and paying principal and purported profits to existing investment clubs and individual investors of approximately \$19 million from new investor funds. [Ex. 2 at ¶¶9,11].

41. Contrary to Theodule's representations to prospective investors that he used trading profits to fund new business ventures, some of which purportedly benefitted the Haitian community in the United States and Haiti, and others in Sierra Leone [Ex. 3 at pp. 49:13-15, 81:8-19, 172:3-173:5; Ex. 10 at ¶7], there were no trading profits. Most of the funds the Defendants disbursed went to pay earlier investors their purported profits, not fund business projects. [Ex. 2 at ¶¶9-11].

42. Theodule's representations about the safety and security of investors' funds were also patently false. SIMS was not a regulatory agency, but rather a private entity that was, until recently, headed by a former CCC employee. [Theodule Answer, DE 23, at ¶11 (admitting SIMS is a private entity) and ¶15 (admitting SIMS is not a governmental regulatory agency)].

43. The Defendants paid SIMS and its employees, and transferred at least \$122,000 to them. [*Id.* at ¶9(b)(ii)]. There is no evidence SIMS verified investors' deposits to ensure the safety of investor funds, and Theodule took the Fifth Amendment on this issue. [Ex. 15, Theodule Deposition Testimony, at 61:19-62:5].

44. To the contrary, Theodule commingled investor funds extensively with his own personal accounts and misappropriated at least \$24 million. [Ex. 2 at ¶9(b)(ii)].

45. Of the investor funds raised, Theodule transferred approximately \$2.1 million to his personal bank accounts, made cash withdrawals of more than \$1.4 million, and siphoned off more than \$700,000 for personal expenses, including luxury automobiles, credit card bills, a wedding, and travel. [Exhibit 2 at ¶9(b)(ii)]. He also bought his sister a condominium. [Ex. 17, Yolette Williams Deposition, at 25-26].

46. In addition, contrary to Theodule's representations to prospective investors that they could withdraw their investor funds after 90 days, ACCC did not pay investors who requested the return of their principal and supposed profits after the 90-day period. [Ex. 3 at pp. 127:20-129:1; Ex. 4 at ¶¶15-17; Ex. 6 at ¶¶18-22; Ex. 8 at ¶¶17-19; Ex. 9 at ¶¶35-44; Ex. 10 at ¶¶29-32].

47. In December 2008, Theodule told investors ACCC "will ask to delay any withdrawals for at least 90 days," but even then he told investors that their money was "secure and not lost," despite knowing, among other things, that he had lost 97% of investors' funds he traded and had siphoned off investors' funds for his personal use. [Ex. 12, at Exhibit G; Ex. 2, Receiver's Affidavit, at ¶¶9-10 (Theodule's personal use of funds and net trading losses); DE 23, Answer, at ¶4 (admitting net trading loss); and Theodule Statement, DE 90, at pg. 4].

48. In connection with the conduct alleged in the Complaint in this action, Theodule made use of the means or instrumentalities of interstate commerce, the means or instruments of transportation and communication in interstate commerce, and the mails. [Theodule Answer, DE 23, at ¶9].

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on October 2, 2009, a copy of the foregoing was served via cm/ecf filing upon:

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