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IN THE MATTER OF SENIOR ASSET § ORDER NO. ENF-21-CDO-1855
PROTECTION, INC., d/b/a ENCORE § SOAH Docket 312-20-4583
FINANCIAL SOLUTIONS §

TO: SENIOR ASSET PROTECTION, INC., dba ENCORE FINANCIAL SOLUTIONS
5706 Bull Creek Road, Austin, TX 78756
Barton Oaks Plaza, 3110 Glen Ora Street, Austin, TX 78704
901 South Mopac Expressway, Building 1, Suite 300, Austin, TX 78746
Gary Neal Beasley, Registered Agent, 5706 Bull Creek Road, Austin, TX 78756

ORDER AFFIRMING EMERGENCY CEASE AND DESIST ORDER

I. STATEMENT OF THE CASE

On February 25, 2020, the Securities Commissioner (**Commissioner**) entered an Emergency Cease and Desist Order, Order No. ENF-CDO-20-1798, (**Emergency Order**) against Senior Asset Protection, Inc. d/b/a/ Encore Financial Solutions (**Encore** or **Respondent**). In the Emergency Order, the Commissioner ordered the Respondent to cease and desist from:

1. Offering for sale any security in Texas until the security is registered with the Commissioner or is offered for sale pursuant to an exemption from registration under the Texas Securities Act (**Securities Act**);
2. Acting as securities dealers or agents in Texas until they are registered with the Commissioner or are acting pursuant to an exemption from registration under the Securities Act;
3. Engaging in any fraud in connection with the offer for sale of any security in Texas; and
4. Offering securities in Texas through an offer containing a statement that is materially misleading or otherwise likely to deceive the public.

The Respondent requested a hearing regarding the Emergency Order. On September 21, 2020, the parties stipulated and agreed to Findings of Fact Nos. 1-14, 16, 17, 24, 26, 27, 52, 53, and 54 of the Emergency Order. A hearing on the merits was held via Zoom videoconference before an Administrative Law Judge (**ALJ**) at the State Office of Administrative Hearings (**SOAH**) on September 24, 2020. On January 26, 2021, the hearing reconvened and the record remained open to allow the parties to submit written closing arguments.

II. PROPOSAL FOR DECISION

The ALJ issued a Proposal for Decision (PFD) on July 19, 2021, recommending that the Emergency Order should be affirmed in its entirety and making the following Findings of Fact and Conclusions of Law. Neither party filed exceptions to the PFD. The Findings of Fact and Conclusions of Law from the PFD are as follows:¹

FINDINGS OF FACT

1. On February 25, 2020, the Texas State Securities Board (**TSSB**) Commissioner entered Emergency Cease and Desist Order No. ENF-CDO-20-1798 (**Emergency Order**) against six parties: Senior Asset Protection, Inc. d/b/a Encore Financial Solutions (**Encore**); Merchant Growth & Income Funding, LLC (**Merchant Growth**); A Better Financial Plan (**A BFP**); Complete Business Solutions Group, Inc. d/b/a Par Funding (**Par Funding**); Gary Neal Beasley; and Perry Abbonizio.
2. On July 31, 2020, Encore requested a hearing to set aside the Emergency Order.
3. On August 20, 2020, the TSSB Enforcement Division (**Enforcement Division**) sent Encore a notice of hearing that contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the factual matters asserted.
4. Encore and the TSSB Enforcement Division waived the requirement that the hearing be held within 10 days of the receipt of the request for hearing.
5. On August 20, 2020, the Enforcement Division filed a Motion for Dismissal, on the basis that Encore failed to timely request a hearing.
6. On September 1, 2020, Encore filed a response to the Enforcement Division's motion for dismissal.
7. On September 15, 2020, the ALJ denied the Enforcement Division's motion.
8. On September 21, 2020, the Enforcement Division filed a Motion for Reconsideration.
9. On September 24, 2020, State Office of Administrative Hearings (**SOAH**) Administrative Law Judge (**ALJ**) Steven M. Rivas convened a hearing on the merits via Zoom videoconference. The Enforcement Division was represented by attorneys Jeremy Heintz and Tina Lawrence. Encore was represented by attorney John B. Diefenbach. The Enforcement Division made an oral motion for dismissal at the hearing, which was taken under advisement, and the hearing commenced as scheduled.

¹ Minor corrections for typographical errors have been made to improve readability. These changes have been noted and are explained in footnotes.

10. On January 26, 2021, the hearing reconvened and the record remained open to allow the parties to submit written closing arguments.
11. On May 20, 2021, the ALJ found in his discretion that there was good cause to support Encore's untimely request for a hearing and that the Enforcement Division's motion for dismissal on the basis of Encore's untimely request for hearing should be denied. The record in this matter closed on May 20, 2021.
12. The Commissioner issued the Emergency Order following a TSSB investigation into a financial scheme referred to by the parties as the Merchant Cash Advance (MCA) scheme carried out by Encore, Merchant Growth, Par Funding, and A BFP.
13. The MCA scheme involved advertising, funding, and eventually issuing promissory notes to investors by Merchant Growth. The promissory notes issued by Merchant Growth were unregistered securities. Merchant Growth, Par Funding, and A BFP did not contest the Emergency Order.
14. Gary Neal Beasley is the President, Chief Executive Officer and Sole Director of Encore. Encore is a domestic for-profit corporation operated from Austin, Texas, and maintained an internet website accessible to the public at <https://www.encore-financial.com>. Encore's website claimed that Encore was founded on a philosophy of minimizing downside risk and also stated the company focuses on retirement planning by helping individuals and businesses plan for a successful financial future. The Encore website further represented that Encore offered ways to diversify a portion of portfolios away from stock market risk while earning a high rate of return.
15. In 2013, Mr. Beasley formed Merchant Growth, a Delaware limited liability company operating from Austin, Texas, and Mr. Beasley was its sole member.
16. Merchant Growth offered and issued various classes of promissory notes, and claimed the promissory notes provided investors with an opportunity to participate in relatively high rates of return generated in merchant cash advance financing transactions.
17. Encore published an advertisement on a local radio station that broadcasted in and around Austin, Texas. In the radio advertisements, Mr. Beasley encouraged the public to contact Encore and purchase investments that have less risk than² the stock market and that protect against an inevitable stock market correction.
18. William Mitchell, a Financial Examiner with Enforcement Division, investigated Encore following up on a tip he received from a potential investor who claimed to have heard the Encore radio advertisement on KLBK FM radio.

² A typographical error has been corrected. It appears as "that" in the PFD.

19. On March 14, 2019, Mr. Mitchell called Encore using the phone number listed on Encore's website and spoke to Mr. Beasley under the alias of Earl Franklin.
20. Mr. Beasley answered the call by saying "Encore Financial, this is Gary, may I help you?"
21. During the phone conversation, Mr. Beasley explained four different investment opportunities including the MCA scheme.
22. On March 14, 2019, Mr. Beasley sent an email to "Earl Franklin" from an email address: gary@encore-financial.com that summarized the earlier phone conversation.
23. The email also contained a link to a video, which featured Perry Abbonizio (a named party on the Emergency Order) and described the MCA scheme in detail.
24. On March 27, 2019, Mr. Beasley provided Mr. Mitchell with a 20-page brochure, which was created by Par Funding and provided further explanation about the MCA Scheme.
25. Mr. Beasley continued to correspond with Mr. Mitchell (as Franklin) through his email address: gary@encore-financial.com.
26. On April 11, 2019, Mr. Beasley provided Mr. Mitchell with the following Merchant Growth documents in connection to the MCA scheme: Merchant Growth's Private Placement Memo (PPM); Merchant Growth's LLC Agreement; Merchant Growth's Subscription Agreement; and Merchant Growth's Promissory Note.
27. Between May 20, 2019, and June 13, 2019, Mr. Beasley used gary@encore-financial.com to exchange emails with Mr. Mitchell (as Earl Franklin) regarding a potential investment into the MCA scheme.
28. On February 3, 2020, Mr. Mitchell (as Franklin) called Mr. Beasley to ask him about the following information that was previously undisclosed: (1) a Summary Cease and Desist Order in New Jersey issued against Par Funding; (2) a Consent Order in Pennsylvania issued against Par Funding; and (3) pending litigation in federal court against Par Funding.
29. Mr. Beasley told Mr. Mitchell that he was not "the first one who found those" and that "being in business for a long time, these things happen."
30. When Mr. Beasley started offering the MCA scheme to potential investors, he made no changes to Encore's website.
31. Encore and Merchant Growth operated out of the same office space.
32. Encore and Merchant Growth utilized the same email address and signature block.

33. Encore and Merchant Growth shared the same phone number and shared the same business logo.
34. Encore and Merchant Growth participated in the MCA scheme as alleged in the Emergency Order.

CONCLUSIONS OF LAW³

1. TSSB has jurisdiction over Encore and the subject matter of this disciplinary action pursuant to the provisions of the Texas Securities Act (Act). Tex. Rev. Civ. Stat. art. 581-1 et seq.
2. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a proposal for decision with findings of fact and conclusions of law. Tex. Gov't Code ch. 2003.
3. On receiving a request for a hearing from a person who is the subject of an Emergency Cease and Desist Order, the Commissioner of the TSSB must serve notice of the time and place of the hearing. The hearing must be held not later than the 10th day after the date the Commissioner receives the request for a hearing unless the parties agree to a later hearing date. Tex. Rev. Civ. Stat. art. 581-23-2(D).⁴
4. Encore was given adequate notice of the hearing. Tex. Gov't Code §§ 2001.051-.052.
5. At the hearing, the Commissioner has the burden of proof and must present evidence in support of the order. Tex. Rev. Civ. Stat. art. 581-23-2(D).⁵
6. After the hearing, the Commissioner must affirm, modify, or set aside in whole or part the emergency order. Tex. Rev. Civ. Stat. art. 581-23-2(E).⁶
7. Encore engaged in fraud in connection with the offer for sale of a security. Tex. Rev. Civ. Stat. art. 581-23-2(A)(1)(A).⁷

³ Footnotes have been added to standardize the legal references to the Texas Securities Act to other orders of the Commissioner to facilitate conformity and enhance searching when researching Board orders. These footnotes are for informational purposes only and are not modifications to the Conclusions of Law.

⁴ Section 23-2.D of the Securities Act.

⁵ Section 23-2.D of the Securities Act.

⁶ Section 23-2.E of the Securities Act.

⁷ Section 23-2.A(1)(A) of the Securities Act.

8. Encore made an offer that contained a statement that was materially misleading or otherwise likely to deceive. Tex. Rev. Civ. Stat. art. 581-23-2(A)(2).⁸⁹
9. Encore violated sections 7 and 12 of the Act. Tex. Rev. Civ. Stat. art. 581-7, 581-12.
10. Encore's conduct, acts, and practices threatened immediate and irreparable public harm. Tex. Rev. Civ. Stat. art. 581-23-2(A).¹⁰
11. The fraud in connection with offering securities for sale and violations of sections 7 and 12 of the Act constituted a sufficient basis for issuing the Emergency Order. Tex. Rev. Civ. Stat. art. 581-23-2(A)(2).¹¹
12. The findings of fact, conclusions of law, and ordering paragraphs of the Emergency Order should be affirmed.

ORDER

IT IS THEREFORE ORDERED that the Emergency Cease and Desist Order, Order No. ENF-20-CDO-1798, issued against the Respondent on February 25, 2020, shall be affirmed.

1. It is therefore ORDERED that the Respondent immediately CEASE AND DESIST from offering for sale any security in Texas until the security is registered with the Securities Commissioner or is offered for sale pursuant to an exemption from registration under the Texas Securities Act.
2. It is further ORDERED that the Respondent immediately CEASE AND DESIST from acting as securities dealers or agents in Texas until they are registered with the Securities Commissioner or are acting pursuant to an exemption from registration under the Texas Securities Act.
3. It is further ORDERED that the Respondent immediately CEASE AND DESIST from engaging in any fraud in connection with the offer for sale of any security in Texas.

SIGNED AND ENTERED by the Securities Commissioner on November 5, 2021.



TRAVIS J. ILES
Securities Commissioner

⁸ A typographical error has been corrected. It appears as "582-23-2(A)(2)" in the PFD.

⁹ Section 23-2.A(2) of the Securities Act.

¹⁰ Section 23-2.A of the Securities Act.

¹¹ Section 23-2.A(2) of the Securities Act.

CERTIFICATE OF SERVICE

I hereby certify that on this, the 5th of November 2021, true and correct copies of the foregoing Order Affirming Emergency Cease and Desist Order have been sent to the Respondent by certified mail, return receipt requested, to their last known address on Page 1 of this Order; and VIA EFILE TEXAS to the Respondents' representative of record, the Staff representing the Petitioner, and to the State Office of Administrative Hearings:

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