



STATE OF TENNESSEE
BEFORE THE COMMISSIONER OF COMMERCE AND INSURANCE

TENNESSEE SECURITIES DIVISION,)
)
Petitioner,)
)
vs.) OI No. 2016-0016
)
OPTINVESTMENTS.COM a/k/a VIP BINARY,)
CHARGE XP INVESTMENTS, LTD.,)
HELLOMARKETS and)
GEORGE LEVYNSKY,)
)
Respondents.)

ORDER TO CEASE AND DESIST

This Order issues as the result of a Petition, and its Exhibits attached thereto, filed by the Tennessee Securities Division (“TSD”) of the Department of Commerce and Insurance (“Department”). This Order is based upon the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. The Tennessee Securities Act of 1980, TENN. CODE ANN. §§ 48-1-101 to 48-1-201 (2012) (“Act”), places the responsibility for the administration of the Act on the Commissioner of the Tennessee Department of Commerce and Insurance (“Commissioner”). The TSD is the lawful agent through which the Commissioner discharges this responsibility. TENN. CODE ANN. § 48-1-115 (2012).

2. The TSD is authorized to bring this action based on a finding by the Commissioner that the action is in the public interest, necessary for the protection of investors,

and consistent with the purposes fairly intended by the policy and provisions of the Act. TENN. CODE ANN. § 48-1-116 (2012).

3. Respondent OptInvestments.com ("OptI") is a company based in the British Virgin Islands with a last known address of Road Town, 42/13 Main Street, POB 972. OptI is not and was not, at all relevant times, authorized to do business in the State of Tennessee by the Tennessee Secretary of State. OptI is not, and has not been, registered with the TSD as a broker-dealer, broker-dealer agent, investment adviser, or investment adviser representative.

4. Respondent VIP Binary is a company based in Nicosia, Cyprus with a last known address of Treppides Tower, Kafkasou Street, Nicosia-2112, Cyprus. VIP Binary is not and was not, at all relevant times, authorized to do business in the State of Tennessee by the Tennessee Secretary of State. VIP Binary is not, and has not been, registered with the TSD as a broker-dealer, broker-dealer agent, investment adviser, investment adviser representative, or with the federal Securities and Exchange Commission ("SEC") as an internet trading platform.

5. Respondent Charge XP Investments, Limited ("Charge XP") is a company based in Nicosia, Cyprus with a last known address of 9 Kafkasou Street, Nicosia-2112, Cyprus. Charge XP Binary is not, and was not at all relevant times, authorized to do business in the State of Tennessee by the Tennessee Secretary of State. Charge XP is not, and has not been, registered with the TSD as a broker-dealer, broker-dealer agent, investment adviser, investment adviser representative, or with the SEC as an internet trading platform.

6. Respondent Hellomarkets is, on information and belief, an assumed name company or "alter ego" company that is indistinguishable from OptI, VIP Binary, and Charge XP, which all operate in the same category of the securities industry and are all putatively represented by George Levynsky ("Levynsky").

7. Levynsky is an unknown individual whose true identity and whereabouts are unknown. There is no additional identifying personal or address information in the records of the TSD for Levynsky. Specifically, Levynsky is not, and has not been, registered with the TSD as a broker-dealer, broker-dealer agent, investment adviser, or investment adviser representative.

8. At all relevant times, Respondents conducted a securities related business under the identities of Optinvestments.com, VIP Binary, Charge XP Investments, Ltd., Hellomarkets, and George Levynsky, all of whom acted as broker-dealers of securities.

9. Between September 2015 and July 2016, Respondents offered to sell or sold unregistered securities from, in, or into Tennessee in the cumulative amount of at least one hundred ninety-one thousand dollars (\$191,000) to at least one (1) Tennessee investor.

10. The proceeds of the sales were claimed by the Respondents to establish trading accounts in "binary options" in the name of the investor. Each of the sales of binary options contracts by the Respondents meet the definition of "Investment Contract" as defined by the Tennessee Supreme Court in *King v. Pope*, 91 S.W.3d 314 (Tenn. 2002).¹

11. The first security sold from, in, or into Tennessee in the transactions referred to in paragraph 10. was an investment contract between Tennessee investor ("CLB") and VIP Binary through its agent, Levynsky, in the amount of seventy-five thousand dollars (\$75,000).

12. The second security sold into Tennessee was an investment contract between Bennard and VIP Binary through its agent, Levynsky, in the amount of one hundred sixteen thousand dollars (\$116,000).

¹ The Court defines an investment contract and establishes that an investment contract is a "security" within the meaning of the Act. The elements of an investment contract are: (1) An offeree furnishes initial value to an offeror, and (2) a portion of this initial value is subjected to the risks of the enterprise, and (3) the furnishing of the initial value is induced by the offeror's promises or representations which give rise to a reasonable understanding that a valuable benefit of some kind, over and above the initial value, will accrue to the offeree as a result of the operation of the enterprise, and (4) the offeree does not receive the right to exercise practical and actual control over the managerial decisions of the enterprise. *King* at 321.

13. The investment contracts offered and sold by the Respondents were not registered with the TSD for sale in Tennessee, were not the subjects of any exemption filings made with the TSD, were not exempted from the registration requirements of the Act, and do not qualify as covered securities pursuant to the Act.

14. At no time did Respondents disclose to investors that the securities offered and sold were not registered with the TSD.

15. In both of the aforementioned instances, the capital account of the investors was falsely represented by Respondents and/or their agents to have only twenty percent (20%) of the capital account exposed to risk at any given time.

16. Respondents have, upon information and belief, as recently as July of 2016, continued their involvement in the securities industry in Tennessee without the sellers or the securities being registered with the TSD.

CONCLUSIONS OF LAW

Respondents' Ongoing Unlawful Conduct Warrants the Issuance of an Order to Cease and Desist

17. The Commissioner finds that this action is in the public interest, necessary for the protection of investors and consistent with the purposes fairly intended by the policy and provisions of the Act pursuant to TENN. CODE ANN. § 48-1-116(a) and (b) (2012). In addition, the Commissioner has determined that prior notice of this Cease and Desist Order is not in the public interest and would be detrimental to the protection of investors. TENN. CODE ANN. § 48-1-116(e)(2)(A) (2012). Respondents' ongoing unlawful conduct necessitates an order to cease and desist all such unlawful activity to prevent the Respondents from continuing to sell unregistered securities while not being registered to offer to sell or to sell securities in Tennessee by simply

changing the name or form of the offerings being made in order to hide the unlawful nature of their conduct.

18. The facts as stated demonstrate that the Respondents, who are not registered with the TSD to offer to sell or to sell securities from, in, or into Tennessee, are continuing to offer to sell or to sell securities in Tennessee that are not registered with the TSD for sale in Tennessee.

19. Respondents' continuing unlawful conduct provides grounds under the TENN. CODE ANN. §§ 48-1-116(a) and 48-1-116(e)(2)(A) (2012) for the entry of an Order to Cease and Desist all securities activities.

Respondents Offered or Sold Securities Without Being Registered to Offer or Sell Securities From, In, or Into Tennessee

20. The facts as stated demonstrate that the Respondents offered to sell or sold securities in Tennessee without being registered under the Act to offer to sell or to sell securities in Tennessee. It is unlawful for any person to transact business from, in, or into this state unless such person is registered as a broker-dealer or agent under the Act. TENN. CODE ANN. § 48-1-109(a) (2012).

21. The Respondents' offers to sell or sales of securities without being registered with the TSD to engage in the offering/selling of securities from, in, or into Tennessee provides adequate grounds under TENN. CODE ANN. § 48-1-116(a) (2012) for the entry of an Order to Cease and Desist all securities activities.

Respondents Sold Unregistered Securities in Tennessee

22. The facts as stated demonstrate that Respondents sold securities in Tennessee that were not registered with the TSD to be sold in Tennessee. It is unlawful for any person to sell any security in this state unless it is registered under the Act, the security or transaction is exempted under the Act, or the security is a covered security. TENN. CODE ANN. §§ 48-1-104(a)

(2012) and 48-1-102(17)(A).

23. Respondents' sales of unregistered securities provide grounds under TENN. CODE ANN. § 48-1-116(a) (2012) for the entry of an Order to Cease and Desist all securities activities.

Respondents Engaged in Securities Fraud

24. The facts as stated demonstrate that the Respondents failed to disclose to the investors that they were not registered to sell securities. Pursuant to TENN. CODE ANN. § 48-1-121(a)(2) (2012),

[i]t is unlawful for any person, in connection with the offer, sale or purchase of any security within the State of Tennessee, directly or indirectly, to ... [m]ake any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading....

25. The failure of the Respondents to disclose these material facts provides grounds under TENN. CODE ANN. § 48-1-116(a) (2012) for the entry of an Order to Cease and Desist all securities activities.

26. The facts as stated demonstrate that Respondents made material misrepresentations to Tennessee investors regarding the risks associated with investing in the products that they offered and sold in Tennessee.

ORDER

NOW, THEREFORE, in consideration of the foregoing, it is **ORDERED** that:

1. Respondents **SHALL COMPLY** with the Act and all rules promulgated thereunder.
2. The Respondents **SHALL CEASE AND DESIST** any further conduct as a broker-dealer, broker-dealer agent from, in, or into the state of Tennessee until such time as they are effectively registered with the TSD to engage in such activity.

3. The Respondents, and any successor entities or individuals, **SHALL IMMEDIATELY CEASE AND DESIST** from the issuance, offer to sell, or sale of any security, including but not limited to, investment contracts, loan agreements, stock or any other investment interest or security in OptInvestments.com, VIP Binary, Charge XP Investments, Ltd., Hellomarkets, or any product or offering of OptInvestments.com, VIP Binary, Charge XP Investments, Ltd., or Hellomarkets, including any successor entities, to any “person,” as that term is defined under the Act, until such time as any such security is: 1) deemed by the TSD to be registered with the TSD for sale in Tennessee; 2) deemed by the TSD to be exempted from the registration provisions of the Act; or 3) deemed by the TSD to be a covered security, as that term is defined in the Act.

4. Respondents **SHALL CEASE AND DESIST** any further conduct in violation of the Act’s prohibition against engaging in securities fraud, including but not limited to, making any untrue statement of a material fact or omitting to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading.

5. All entities or persons in any way assisting, aiding, or helping the aforementioned Respondents in any of the aforementioned violations of the Act, **SHALL CEASE AND DESIST** all such activities in violation of the Act.

6. This Order to Cease and Desist is not intended to prohibit any lawful conduct in which Respondents might be engaged.

7. Entry of this Order to Cease and Desist shall not in any way restrict the TSD or the Commissioner of the Department from taking further action with respect to these or other possible violations of the Act, or any of the rules promulgated thereunder, by the Respondents.

8. You are advised that you have the right to a hearing as to all matters raised in this Order to Cease and Desist. If you wish to exercise your right to a hearing, please notify:

**FRANK BORGER-GILLIGAN
ASSISTANT COMMISSIONER FOR SECURITIES
STATE OF TENNESSEE DEPARTMENT OF COMMERCE AND INSURANCE
DAVY CROCKETT TOWER, 8TH FLOOR
500 JAMES ROBERTSON PARKWAY
NASHVILLE, TENNESSEE 37243**

9. Such request must be received within thirty (30) days from the date of entry of this Order to Cease and Desist. This Order to Cease and Desist shall become a Final Order thirty (30) days from the date of its entry, unless written notification requesting a hearing is made within that thirty (30) day period.

ENTERED this 22 day of September, 2017.


Julie Mix McPeak, Commissioner

APPROVED FOR ENTRY:


Frank Borger-Gilligan
Assistant Commissioner for Securities
Department of Commerce and Insurance

ISSUANCE REQUESTED BY:



Charles S. Herrell (BPR# 018035)
Assistant General Counsel
Department of Commerce and Insurance
Davy Crockett Tower
500 James Robertson Parkway
Nashville, Tennessee 37243