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COMMISSIONERS OFFICE

COMMONWEALTH OF KENTUCKY
PUBLIC PROTECTION CABINET
DEPARTMENT OF FINANCIAL INSTITUTIONS
ADMINISTRATIVE AGENCY ACTION NO. 2017-AH-00047

DEPARTMENT OF FINANCIAL INSTITUTIONS

PETITIONER

vs.

FINAL ORDER

PHILLIP JOHN MATHENEY, and

RESPONDENTS

HIGH POWERED PROMOTIONS, LLC and

HIGH PAYOUT POKER, LLC and

HORSE PLAYERS PLAYGROUND, LLC and

HIGH PAYOUT BINGO, LLC and

YIGGIY, LLC AKA YIGGY, LLC

This matter is before the Commissioner of the Kentucky Department of Financial Institutions (“the DFI”) pursuant to KRS 292.470 and 808 KAR 10:225. The Commissioner hereby enters this Final Order against Phillip John Matheney; High Powered Promotions, LLC; High Payout Poker, LLC; Horse Players Playground, LLC; High Payout Bingo, LLC; and Yiggiy, LLC aka Yiggy, LLC, (collectively referred to as “Respondents”) pursuant to KRS Chapter 292, the Securities Act of Kentucky (“the Act”).

PARTIES

1. The DFI is responsible for administering the provisions of the Act, as well as any applicable rules, regulations and orders entered pursuant to the Act.

2. Respondent, Phillip John Matheney, (“Matheney”) was the founder, CEO and registered agent for High Powered Promotions, LLC; High Payout Poker, LLC; Horse Players Playground, LLC; High Payout Bingo, LLC; and Yiggiy, LLC aka Yiggy, LLC. Matheney’s last known address is 208 Dishman Ln, Suite C, Bowling Green, KY 42101.

3. Respondent High Powered Promotions, LLC, (“HPP”) is a private limited liability company formed on September 15, 2011. Respondent HPP maintains a registered office at 208 Dishman Ln., Suite C, Bowling Green, KY 42101. Respondent Matheney is its manager.

4. Respondent High Payout Poker, LLC, (“Poker”) is a private limited liability company formed on June 4, 2010. Respondent Poker maintains a registered office at 208 Dishman Ln., Suite C, Bowling Green, KY 42101. Respondent Matheney is its manager.

5. Respondent Horse Players Playground, LLC, (“Horse”) is a private limited liability company formed on May 10, 2011. Respondent Horse maintains a registered office at 208 Dishman Ln., Suite C, Bowling Green, KY 42101. Respondent Matheney is its manager.

6. Respondent High Payout Bingo, LLC, (“Bingo”) is a private limited liability company formed on May 10, 2011. Respondent Bingo maintains a registered office at 208 Dishman Ln., Suite C, Bowling Green, KY 42101. Respondent Matheney is its manager.

7. Respondent Yiggiy, LLC, (“Yiggiy”) was a private limited liability company formed on May 18, 2012, that was administratively dissolved on September 30,

2014. Respondent Yiggly maintained a registered office at 208 Dishman Ln., Suite C, Bowling Green, KY 42101. Respondent Matheney was its manager.

FINDINGS OF FACT

8. As of August 13, 2013, Respondents had received over \$1.6 million dollars from more than 450 investment transactions, acquired from investment contracts marketed to individuals in twenty-nine (29) states, four (4) Canadian provinces, and twenty-three (23) foreign countries.

9. Respondents described their investment plans as “double your investment guarantee within 6-12 months” and “insuring a profit.”

10. Matheney identified himself as the Chief Executive Officer (“CEO”) on each investment contract, and he was the only authorized signer on all of the Respondents’ bank accounts.

11. Matheney utilized investor funds for a variety of personal expenses such as ATM and counter check withdrawals, meals, investment in a Bowling Green “Skybox Restaurant”, and trips to Las Vegas and Disney World.

12. The investment contracts were securities that were never registered with the DFI.

13. Matheney has never registered with the DFI to offer or sell securities in Kentucky.

14. Respondents made material misrepresentations and/or omissions of facts about the offerings, including but not limited to, speed and amount of repayment, failure to explain use of proceeds, the aggregate offering amount, and associated risks.

15. On May 22, 2017, the DFI filed an Administrative Complaint against Respondents seeking the imposition of a fine and a cease and desist order for Respondent's multiple violations of the Act. The Administrative Complaint contained a notice that a written answer with a request for a hearing must be filed with the DFI within twenty (20) days of service of the Administrative Complaint. The original Administrative Complaint was filed with the Office of the Commissioner.

16. A copy of the Administrative Complaint was sent to Respondents' last known address by certified mail return receipt requested.

17. The envelopes containing copies of the Administrative Complaint, sent by certified mail, were returned to the DFI by the United States Postal Service on June 20, 2017, and marked "return to sender- unclaimed- unable to forward."

18. More than twenty (20) days have passed since the envelopes containing copies of the Administrative Complaint, sent by certified mail, were returned to the DFI. Respondents have not filed written answers to the Administrative Complaint nor requested a hearing.

STATUTORY AUTHORITY

19. Pursuant to KRS 292.340, "[i]t is unlawful for any person to offer or sell any security in this state, unless the security is registered under this chapter, or the security or transaction is exempt under this chapter, or the security is a covered security."

20. Pursuant to KRS 292.330, it is unlawful for any broker-dealer, agent, investment adviser, or investment adviser representative to transact business in Kentucky without being registered with the DFI, unless they meet the requirements for statutory exemption.

21. Pursuant to KRS 292.320(1)(b), it is unlawful for a person, in connection with the offer or sale of any security, directly or indirectly, “to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading,”

22. Pursuant to KRS 292.430(3),

When any person, including any nonresident of this state, engages in conduct prohibited or made actionable by this chapter or any rule or order hereunder, and the person has not filed a consent to service of process under subsection (1) or (2) of this section and personal jurisdiction over him or her cannot otherwise be obtained in this state, that conduct shall be considered equivalent to his or her appointment of the commissioner or the commissioner's successor in office to be the person's attorney to receive service of any lawful process in any noncriminal suit, action, or proceeding against the person or the person's successor executor or administrator which grows out of that conduct and which is brought under this chapter or any rule or order hereunder, with the same force and validity as if served on the person personally. Service may be made by leaving a copy of the process in the office of the commissioner, and it is not effective unless:

- (a) The plaintiff, who may be the commissioner, in a suit, action, or proceeding instituted by the commissioner, forthwith sends notice of the service and a copy of the process by certified mail, return receipt requested, or by registered mail to the defendant or respondent at his or her last known address or takes other steps which are reasonably calculated to give actual notice; and
- (b) The plaintiff's affidavit of compliance with this subsection is filed in the case on or before the return day of the process, if any, or within such further time as the court allows.

23. KRS 292.470(3)(a) authorizes the DFI's commissioner to issue a final order, after notice and opportunity for a hearing, containing findings of fact and conclusions of law, directing any person that engaged in activity constituting a violation of the Act to cease and desist from the activity and pay a civil fine.

24. 808 KAR 10:225 Section 2(3) states that if a written answer to the Administrative Complaint is not filed with the DFI, the Commissioner shall enter a final order granting the relief requested in the Administrative Complaint.

25. Pursuant to KRS 292.500(14),

The commissioner may impose civil fines against any person who violates any provision of this chapter or any rule or order or voluntary agreement entered into under this chapter. The fine shall not exceed twenty thousand dollars (\$20,000) per violation, except when the violation is directed at or results in monetary damage to one (1) or more individuals who are sixty (60) years of age or older, the commissioner may impose an additional fine not to exceed twenty thousand dollars (\$20,000) per violation. Each act or transaction which violates this chapter or administrative regulation, or orders or agreements entered into under this chapter, shall constitute a separate violation. Any employer or principal shall be jointly and severally liable for fines imposed in connection with the conduct of employees or agents.

CONCLUSIONS OF LAW

26. Pursuant to KRS 292.310(19), the definition of security includes "investment contract." Thus, the investment contracts offered and sold by Respondents meet the statutory definition of a security contained in KRS 292.310(19).

27. Respondents violated KRS 292.340 by offering to sell and selling securities even though the securities were not registered, were not exempt from registration, and were not covered securities.

28. Respondent Matheney violated KRS 292.330 by offering or selling securities in Kentucky without being registered with the DFI.

29. Respondents violated KRS 292.320 by, in connection with the offer or sale of a security, directly or indirectly, making untrue statements of material fact and omitting to state material facts necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading.

30. Service of the Administrative Complaints on Respondents were completed on June 20, 2017, pursuant to KRS 13B.050(2). Respondents did not file a written answer or otherwise request a hearing. Therefore, it is appropriate to enter this Final Order granting the relief requested in the Administrative Complaint.

ORDER

THEREFORE, based upon the foregoing Findings of Fact, Statutory Authority, and Conclusions of Law, the Commissioner **HEREBY ORDERS**:

1. Respondents, Phillip John Matheney; High Powered Promotions, LLC; High Payout Poker, LLC; Horse Players Playground, LLC; High Payout Bingo, LLC; and Yiggiy, LLC, shall **CEASE AND DESIST** from violating KRS 292.340 by offering or selling unregistered securities into, within, or from the Commonwealth of Kentucky.

2. Respondent Phillip John Matheney shall **CEASE AND DESIST** from violating KRS 292.330 by offering or selling securities into, within or from the Commonwealth of Kentucky.

3. Respondents, Phillip John Matheney; High Powered Promotions, LLC; High Payout Poker, LLC; Horse Players Playground, LLC; High Payout Bingo, LLC; and Yiggiy, LLC, shall **CEASE AND DESIST** from violating KRS 292.320 by making

untrue statements of material fact in connection with the offer and sale of investment contracts or any other security into, within, or from the Commonwealth of Kentucky

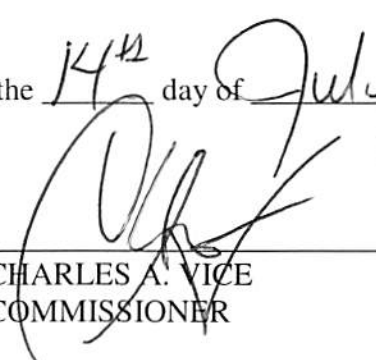
4. Respondents, Phillip John Matheney; High Powered Promotions, LLC; High Payout Poker, LLC; Horse Players Playground, LLC; High Payout Bingo, LLC; and Yiggiy, LLC, shall **CEASE AND DESIST** from committing or causing any other violations of and any future violations of the Act.

5. Respondents, Phillip John Matheney; High Powered Promotions, LLC; High Payout Poker, LLC; Horse Players Playground, LLC; High Payout Bingo, LLC; and Yiggiy, LLC, jointly and severally, shall pay a fine of **\$206,000.00**.

6. Nothing in this Order shall prevent the DFI, or any other authority, from taking any further administrative or enforcement action under the Act or any other applicable law or regulation.

7. This is a **FINAL AND APPEALABLE ORDER**. The **EFFECTIVE DATE** of this order shall be the date reflected on the certificate of service attached to this Order.

IT IS SO ORDERED on this the 14th day of July 2017.



CHARLES A. VICE
COMMISSIONER

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NOTICE OF APPEAL RIGHTS

Pursuant to KRS 292.490, you are hereby notified that you have the right to appeal this Final Order of the Commissioner. If you choose to appeal, you must file a written petition asking that the order be modified or set aside in whole or in part with the Franklin Circuit Court within thirty (30) days after entry of this Order. A copy of the petition must be served upon the Commissioner of the Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, KY 40601.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **Final Order** was sent by certified mail, return receipt requested, on this the 25 day of July, 2017, to:

PHILLIP JOHN MATHENEY
208 Dishman Ln., Suite C
Bowling Green, KY 42101

HIGH POWERED PROMOTIONS, LLC
208 Dishman Ln., Suite C
Bowling Green, KY 42101
Attn: Phillip John Matheney

HIGH PAYOUT POKER, LLC
208 Dishman Ln., Suite C
Bowling Green, KY 42101
Attn: Phillip John Matheney

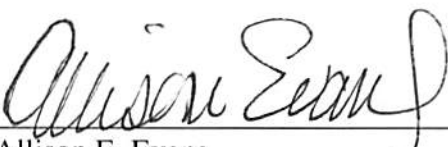
HORSE PLAYERS PLAYGROUND, LLC
208 Dishman Ln., Suite C
Bowling Green, KY 42101
Attn: Phillip John Matheney

HIGH PAYOUT BINGO, LLC
208 Dishman Ln., Suite C
Bowling Green, KY 42101
Attn: Phillip John Matheney

YIGGIY, LLC
208 Dishman Ln., Suite C
Bowling Green, KY 42101
Attn: Phillip John Matheney

And hand delivered to:

Hon. Gary W. Adkins
Department of Financial Institutions
1025 Capital Center Drive, Suite 200
Frankfort, KY 40601


Allison E. Evans
Department of Financial Institutions