

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

AT RICHMOND, JULY 8, 2011

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COMMONWEALTH OF VIRGINIA, ex. rel.

STATE CORPORATION COMMISSION

v.

CASE NO. SEC-2009-00114

ANDREW PILZ
and
TINA PILZ D/B/A SKIN APPEAL
DAY SPA, INC.,
Defendants

FINAL ORDER

The Division of Securities and Retail Franchising ("Division") of the State Corporation Commission ("Commission") conducted an investigation of Andrew Pilz and Tina Pilz d/b/a Skin Appeal Day Spa, Inc., pursuant to § 13.1-518 of the Virginia Securities Act, § 13.1-501 *et seq.* of the Code of Virginia.

Based upon that investigation, the Division alleged that the Defendants: (i) violated § 13.1-502(2) of the Act by, directly or indirectly, obtaining money or property by means of any untrue statement of a material fact or any omission 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; (ii) violated § 13.1-504 A of the Act by transacting business in the Commonwealth of Virginia without being duly registered with the Division as an agent of the issuer; and (iii) violated § 13.1-507 of the Act by offering or selling securities that were not registered under the Act or exempt from registration.

The Defendants agreed to the entry of a Commission Settlement Order which was entered on June 17, 2010. Pursuant to the terms of the Settlement Order, the Defendants agreed to pay Two Hundred Ten Thousand Dollars (\$210,000) in monetary penalties and Two Thousand Four

Hundred Dollars (\$2,400) to defray the costs of investigation. Such penalties and investigative costs were waived upon the condition that the Defendants make a written offer of rescission to all investors who were offered and sold securities in violation of the Act within thirty (30) days of the date of entry of the Settlement Order. Additionally, the written offer of rescission was to be provided to the Division for comment and review at least ten (10) days prior to its being sent to investors. No such written offer of rescission was furnished to the Division for review nor was any written offer of rescission made to any investor in accordance with the terms of the Settlement Order. Furthermore, no investor has received any form of restitution. Paragraph (3) of the undertakings section of the Settlement Order provided:

The Commission shall retain jurisdiction in this matter for all purposes, including the institution of a show cause proceeding, or taking such other action it deems appropriate, on account of the Defendants' failure to comply with the terms and undertakings of the settlement.

On December 8, 2010, the Commission issued a Rule to Show Cause ("Rule") against the Defendants. The Rule, among other things, assigned the matter to a Hearing Examiner, scheduled an evidentiary hearing for January 13, 2011, and directed the Defendants to file a responsive pleading on or before December 29, 2010. Additionally, the Rule ordered the Defendants to appear and show cause why each Defendant should not be: (i) ordered to pay the penalties as previously delineated in the Settlement Order; (ii) enjoined pursuant to § 13.1-519 of the Act from future violations; and (iii) held in contempt of the Commission's Settlement Order pursuant to § 12.1-33 of the Code of Virginia.

An evidentiary hearing on the Rule was convened on January 13, 2011. Gauhar R. Naseem, Esquire, appeared on behalf of the Division. There was no appearance by or on behalf of the Defendants. Mr. Naseem advised that he was unable to confirm proper service on the Defendants, and the Division requested a general continuance of the proceedings. The motion

was granted pending further ruling of the Hearing Examiner. Subsequently, the Division filed additional motions requesting the Commission issue an Amended Rule to Show Cause and to continue the case generally in order to obtain proper service on the Defendants through the Secretary of the Commonwealth. On March 3, 2011, the Commission issued an Amended Rule to Show Cause ("Amended Rule") scheduling a hearing for April 27, 2011.

An evidentiary hearing on the Amended Rule was convened on April 27, 2011. Gauhar R. Naseem, Esquire, appeared on behalf of the Division. The Defendants failed to appear at the hearing and did not file a responsive pleading. The proof of service of the Amended Rule on the Secretary of the Commonwealth was offered into the record as an exhibit. Additionally, the Division offered a sworn affidavit and supporting exhibits from Danny Taylor, investigator with the Division, setting forth the details of the Division's investigation.

The Division asked that the Defendants be found in contempt of the June 17, 2010 Settlement Order and fined One Hundred Dollars (\$100) per day from June 17, 2010 to April 27, 2011, for a total of Thirty-one Thousand Seven Hundred Dollars (\$31,700). In addition, the Division requested that the initial penalties and investigative costs that were waived as part of the Settlement Order be reinstated.

On May 25, 2011, the Hearing Examiner issued his Report. In his report, he found that:

- (i) the Defendants were in default of the Amended Rule to Show Cause issued on March 3, 2011;
- (ii) the Defendants should be held in contempt of the Settlement Order entered on June 17, 2010, and be fined in the amount of Thirty-one Thousand Seven Hundred Dollars (\$31,700); and
- (iii) the penalty in the amount of Two Hundred Ten Thousand Dollars (\$210,000) and the investigative costs of Two Thousand Four Hundred Dollars (\$2,400) that were suspended in the Settlement Order should be reinstated against the Defendants. The Report allowed the parties 21 days in which to provide comments. The Defendants did not file comments.

NOW THE COMMISSION, upon consideration of the Amended Rule, the record, the Hearing Examiner's Report, and the applicable statutes, is of the opinion and finds that the Hearing Examiner's findings and recommendations are reasonable and should be adopted.

Accordingly, IT IS ORDERED THAT:

- (1) The findings and recommendations of the May 25, 2011 Hearing Examiner's Report are hereby adopted;
- (2) The Defendants are in default of the March 3, 2011 Amended Rule to Show Cause;
- (3) The Defendants are in contempt of the Commission's Settlement Order pursuant to § 12.1-33 of the Code of Virginia and are hereby fined in the amount of Thirty-one Thousand Seven Hundred Dollars (\$31,700);
- (4) The penalty in the amount of Two Hundred Ten Thousand Dollars (\$210,000) and the investigative costs of Two Thousand Four Hundred Dollars (\$2,400) that were suspended in the previously entered Settlement Order of June 17, 2010, are hereby reinstated against the Defendants;
- (5) The Defendants are permanently enjoined from violating the Act in the future; and
- (6) This case is dismissed and the papers filed herein shall be placed in the file for ended causes.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission, by CERTIFIED MAIL, RETURN RECEIPT REQUESTED, to Andrew Pilz and Tina Pilz d/b/a Skin Appeal Day Spa, Inc., 10643 Greentail Drive South, Boynton Beach, Florida 33436; and the Commission's Office of General Counsel and Division of Securities and Retail Franchising.