

COMMONWEALTH OF VIRGINIA  
STATE CORPORATION COMMISSION

AT RICHMOND, MAY 16, 2012

COMMONWEALTH OF VIRGINIA, *ex rel.*

STATE CORPORATION COMMISSION

v.

VERITRAX CORPORATION

and

DALE TOLER,

Defendants

CASE NO. SEC-2011-00006

JUDGMENT ORDER

On May 19, 2011, the State Corporation Commission ("Commission") issued a Rule to Show Cause ("Rule") against Veritrax Corporation and Dale Toler (collectively, "Defendants"). The Rule summarized allegations by the Division of Securities and Retail Franchising ("Division"). Specifically, the Division alleged that the Defendants failed to comply with a subpoena which was issued by the Commission on March 22, 2011 ("Subpoena"), in accordance with § 13.1-518 of the Virginia Securities Act ("Act"), § 13.1-501 *et seq.*, of the Code of Virginia ("Code").

The Rule, among other things, assigned the matter to a Hearing Examiner and scheduled an evidentiary hearing for July 14, 2011. Additionally, the Rule ordered the Defendants to file a responsive pleading on or before June 10, 2011, in which each Defendant was required to expressly admit or deny the allegations in the Rule and present any affirmative defenses that they intended to assert. The Rule also advised the Defendants that they may be found in default if they failed to either timely file a responsive pleading or if they failed to appear at the hearing.

An evidentiary hearing on the Rule was held on July 14, 2011. The Division was represented by its counsel, Gauhar R. Naseem, Esquire. The Defendants failed to appear after receiving notice of the hearing. The proof of service of the Rule was offered into the record as

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an exhibit. The Division presented the testimony of Gail Moore, Senior Investigator in the enforcement section of the Division, along with documentary proof to provide the facts necessary to prove the allegations set forth in the Rule.

On August 9, 2011, the Hearing Examiner issued her report ("Report"), which thoroughly summarized the factual and procedural history of this case, as well as the evidence and arguments presented at the hearing. In her Report, the Hearing Examiner found that: (i) the Rule was properly served in accordance with § 12.1-19.1 of the Code; (ii) the Defendants were in default; (iii) the Defendants were subject to penalty pursuant to § 12.1-33 of the Code for failing or refusing to obey the Commission's Subpoena; (iv) The Defendants should be fined in the amount of Ten Thousand Dollars (\$10,000) for failing or refusing to obey the Commission's Subpoena; (v) the Defendants should be ordered to produce the documents specified in the Subpoena within ten (10) days following the entry of this Order; (vi) the penalty should be waived if the Defendants produce the documents specified in the Subpoena within ten (10) days following the entry of this Order; (vii) the Defendants should be advised that they will be subject to a separate fine of Ten Thousand Dollars (\$10,000) for each day that they fail or refuse to obey the Commission's Order; and (viii) the Commission should retain jurisdiction over this matter for the assessment of additional fines in accordance with § 12.1-33 of the Code if appropriate.

The Report allowed the Defendants twenty-one (21) days in which to provide comments. The Defendants did not file comments.

On October 3, 2011, the Commission entered an Order ("October 3 Order") adopting the findings and recommendations of the Hearing Examiner, ordered the Defendants to pay Ten Thousand Dollars (\$10,000) in penalties for failing or refusing to obey the Commission's Subpoena and to produce the documents specified in the Subpoena within fifteen (15) days

following the entry of the October 3 Order. Additionally, the October 3 Order subjected the Defendants to a separate fine of Ten Thousand Dollars (\$10,000) for each day that they failed or refused to obey the Commission's October 3 Order by failing to produce the documents specified in the Subpoena.

On April 3, 2012, the Division, by counsel, filed a Motion Requesting Order for Penalties ("Motion"). In the Motion, the Division reported that as of March 21, 2012, the Defendants had failed to produce the documents in accordance with the October 3 Order. Attached to the Motion was the affidavit of Gail Moore, Senior Investigator with the Division, attesting to the Defendants failure to produce the requested documents. The Division moved the Commission to enter an order penalizing the Defendants in accordance with the October 3 Order at a rate of Ten Thousand Dollars (\$10,000) per day from the dates of October 18, 2011 to March 21, 2012, for a total amount of One Million Five Hundred Fifty Thousand Dollars (\$1,550,000).

The Defendants filed no response to the Division's Motion.

NOW THE COMMISSION upon consideration of the Division's Motion is of the opinion and finds that the Division's request should be granted.

Accordingly, IT IS ORDERED THAT:

(1) The Defendants are hereby fined in the amount of One Million Five Hundred Fifty Thousand Dollars (\$1,550,000) for failing or refusing to obey the Commission's October 3 Order; and

(2) This case is dismissed, and the papers 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: Veritrax Corporation, c/o Dale

Toler, 1420 Spring Hill Road, Suite 600, McLean, Virginia 22102; and the Commission's Office of General Counsel and Division of Securities and Retail Franchising.