

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

AT RICHMOND, AUGUST 30, 2018

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COMMONWEALTH OF VIRGINIA, *ex rel.*

STATE CORPORATION COMMISSION

v.

CASE NO. SEC-2017-00051

COMMUNICLIQUE, INC.
and
ANDREW BRENT POWERS,
Defendants

JUDGMENT ORDER

On March 16, 2018, the State Corporation Commission ("Commission") entered a Rule to Show Cause ("Rule") against CommuniClique, Inc. ("CommuniClique"), and Andrew Brent Powers ("Powers," collectively, the "Defendants") based upon allegations presented by the Commission's Division of Securities and Retail Franchising ("Division") that, starting at least in January 2016, the Defendants represented to potential and existing investors that CommuniClique's revenues continued to grow from a notable customer base and that its valuation continued to rise. However, the Division asserted that information produced to the Division by independent third-parties, including CommuniClique's purported customers, its bank, and its identified appraiser, contradicted these statements, and disclosed that no such revenues, customer base or valuations existed.¹

Accordingly, the Division alleged that CommuniClique and Powers made material misrepresentations to investors while offering and selling securities in violation of § 13.1-502 (2) of Virginia Securities Act, § 13.1-501 *et seq.* of the Code of Virginia ("Code"). Additionally, the

¹ A full recitation of the procedural history in this case is summarized in the Hearing Examiner's July 13, 2018 Report ("Report") (Doc. Con. Cen. No. 180720202).

180720202

Division alleged that the Defendants' failure to cooperate with the Division's investigation by failing to respond to a Commission issued subpoena constituted a violation of § 12.1-13 of the Code.

In the Rule, the Commission, among other things, assigned this matter to a Hearing Examiner to conduct further proceedings on behalf of the Commission, directed the Defendants to file a responsive pleading on or before April 6, 2018, and scheduled a hearing in this matter to commence on June 12, 2018 ("Hearing"). The Defendants subsequently requested, and the Hearing Examiner granted, an extension to file responsive pleadings until April 23, 2018.²

The Defendants did not file a response to the Rule as required on or before April 23, 2018. The Division filed a Motion for Default Judgment, which the Hearing Examiner granted on May 24, 2018. However, the existing Hearing date was maintained for purposes of allowing the Division to present evidence supporting its requested penalties and relief as authorized by the Act.

The Hearing was convened on June 12, 2018, in Richmond, Virginia. The Division and its counsel appeared as directed by the Rule. The Defendants failed to appear, either in person or through counsel, despite receiving notice of hearing.

During the Hearing, the Division offered the testimony of one of its investigators, Tom Bayly. During his testimony, Mr. Bayly (1) provided the background and case history for this matter, (2) summarized his conversations with and interviews of the Defendants, investors, and other witnesses, (3) provided an analysis of the financial data obtained in this case, (4) discussed

² The Defendants were represented by counsel when they filed their Motion for Extension of Time to File a Responsive Pleading ("Extension Motion"). However, counsel subsequently withdrew from the case on April 20, 2018 - three days before the Defendants' response was due. *See* Extension Motion, Doc. Con. Cen. No. 100420052 and Notice of Withdrawal, Doc. Con. Cen. No. 180440096.

the relevance and applicability of the submitted exhibits, and, (5) identified how the Division asserted this evidence supported its allegations that (a) the Defendants had violated § 13.1-502 (2) of the Act by making at least three separate misrepresentations regarding CommuniClique's revenues, customer base and valuation during the offer and sale of at least 36 securities since January 2016, and, (b) had violated § 12.1-13 of the Code by failing to respond to the Commission's subpoena.

On July 13, 2018, the Hearing Examiner issued her Report.³ In her Report, the Hearing Examiner summarized the case's procedural background as well as the substantive evidence submitted in the pleadings and during the Hearing. After analyzing the submitted evidence, and finding the Defendants additionally in default for failing to appear at the Hearing, the Hearing Examiner found and recommended that: (1) the testimony and documentary evidence submitted by the Division proved by clear and convincing evidence the Defendants committed at least one hundred eight (108) violations of § 13.1-502 (2) of the Act,⁴ (2) pursuant to § 13.1-521 of the Act, the Defendants' actions warranted assessment of the maximum civil penalties authorized of \$10,000 per violation, for a total penalty assessment of \$1,080,000, (3) pursuant to § 13.1-521 of the Act, the Defendants should be required to make restitution totaling \$9,890,293 to the investors identified by the Division during the Hearing, (4) pursuant to § 13.1-519 of the Act, the Defendants should be permanently enjoined from offering and selling securities in and from the Commonwealth of Virginia and from engaging other agents or affiliates to offer and sell securities in and from the Commonwealth of Virginia on their behalf, (5) pursuant to § 13.1-518 of the Act, the Defendants should be required to pay the Division's costs of investigation totaling

³ See Report.

⁴ Report at 5.

\$10,000, (6) the Defendants violated § 12.1-13 of the Code by failing to comply with a subpoena issued by the Commission, and, (7) the Defendants should be assessed a penalty of \$10,000 for failing to comply with the Commission's subpoena and violating § 12.1-13 of the Code.⁵

The Hearing Examiner further recommended that the Commission enter an order adopting the findings and recommendations of her Report. Comments to the Hearing Examiner's Report were due on or before August 3, 2018. Neither the Division nor the Defendants filed comments.

NOW THE COMMISSION, upon consideration of the matter, is of the opinion and finds that the Hearing Examiner's findings and recommendations are reasonable, supported by the evidentiary record, and should be adopted.

Accordingly, IT IS ORDERED THAT:

(1) The findings and recommendations of the July 13, 2018, Hearing Examiner's Report are hereby adopted.

(2) Pursuant to § 13.1-521 A of the Act, and in accordance with the Commission's regulatory duties and powers, a judgment is entered for the Commonwealth jointly and severally against the Defendants for their violations of the Act.

(3) The Defendants are jointly and severally assessed civil penalties totaling \$1,080,000 pursuant to § 13.1-521 of the Act.

(4) The Defendants are directed to jointly and severally make restitution to the identified investors in the amount of \$9,890,293 pursuant to § 13.1-521 of the Act.

(5) The Defendants are directed to jointly and severally pay the Division's costs of the investigation in the amount of \$10,000, pursuant to § 13.1-518 of the Act.

⁵ Report at 6.

(6) The Defendants are permanently enjoined from offering and selling securities in and from the Commonwealth of Virginia and from engaging other agents or affiliates to offer and sell securities in and from the Commonwealth of Virginia on their behalf.

(7) In accordance with the Commission's regulatory duties and powers, a judgment is entered for the Commonwealth against the Defendants for their violation of § 12.1-13 of the Code and a penalty of \$ 10,000 is imposed jointly and severally against the Defendants as authorized by the Code.

(8) The case is dismissed.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission, by CERTIFIED MAIL, RETURN RECEIPT REQUESTED, to: CommuniClique, Inc., 11950 Democracy Drive, Suite 275, Reston, Virginia 20190; Andrew B. Powers, 43571 Freeport Place, Sterling, Virginia 20166; CommuniClique, Inc., 4201 Wilson Boulevard, Suite 110-231, Arlington, Virginia 22203; Incorporating Services, Ltd., Registered Agent, 7288 Hanover Green Drive, Mechanicsville, Virginia 23111; and a copy shall be delivered to the Commission's Office of General Counsel and the Division of Securities and Retail Franchising.