

FILED IN THE DISTRICT COURT
IN THE DISTRICT COURT OF OKLAHOMA, OKLAHOMA COUNTY, OKLA.
STATE OF OKLAHOMA

FEB - 2 2007

Oklahoma Department of Securities)
ex rel. Irving L. Faught,)
Administrator,)
)
Plaintiff,)
)
v.)
)
Covenant Benefits Group, L.L.C.,)
J. Michael Nimmo and)
Charles E. Bray, Jr.,)
)
Defendants.)

PATRICIA PREBLEY, COURT CLERK
by _____
Deputy

Case No. **CJ -2007-997**

PETITION FOR PERMANENT INJUNCTION
AND OTHER EQUITABLE RELIEF

COMES NOW the Plaintiff, Oklahoma Department of Securities, *ex rel.* Irving L. Faught, ("Department"), and for its claims against the above-named Defendants, alleges and states as follows:

OVERVIEW

1. This case involves violations of the Oklahoma Uniform Securities Act of 2004 ("Securities Act"), Okla. Stat. tit. 71, §§ 1-101 through 1-701 (Supp. 2003), by Covenant Benefits Group, L.L.C., J. Michael Nimmo and Charles E. Bray, Jr. (collectively "Defendants"). Specifically, the Department alleges that Defendants offered and sold unregistered securities in violation of Section 1-301 of the Securities Act and perpetrated fraud in connection with the offer, sale, or purchase of securities in violation of Section 1-501 of the Securities Act.

2. Furthermore, this case involves violations of the Oklahoma Business Opportunity Sales Act ("Business Opportunity Act"), Okla. Stat. tit. 71, §§ 801-829 (2001), by Defendants.

Specifically, the Department alleges that Defendants offered and sold unregistered business opportunities in violation of Section 806 of the Business Opportunity Act and perpetrated fraud in connection with the offer and/or sale of business opportunities in and/or from this state.

JURISDICTION

3. The Administrator of the Department brings this action pursuant to Section 1-603 of the Securities Act and Section 814 of the Business Opportunity Act and is the proper party to bring this action against the Defendants.

4. Pursuant to Sections 1-102 and 1-610 of the Securities Act, Defendants, in connection with their activities in the offer, sale, and purchase of securities, are subject to the provisions of the Securities Act.

5. Pursuant to Sections 802 and 818 of the Business Opportunity Act, Defendants, in connection with their activities and the offer and/or sale of business opportunities, are subject to the provisions of the Business Opportunity Act.

6. By virtue of their transaction of business by contract and otherwise and commission of other acts in this state, Defendants are subject to the jurisdiction of this Court and to service of summons within or outside of this state.

7. Venue is proper in this county.

8. Defendants have engaged in acts and practices in violation of the Securities Act and the Business Opportunity Act. Unless enjoined, they will continue to engage in the acts and practices set forth herein and acts and practices of similar purport and object.

DEFENDANTS

9. Covenant Benefits Group, L.L.C. ("Covenant") is an Oklahoma limited liability company. At all times material hereto, Covenant offered and/or sold securities and business opportunities in and/or from Oklahoma as described herein.

10. J. Michael Nimmo ("Nimmo") is an Oklahoma resident. At all times material hereto, Nimmo offered and/or sold securities in and/or from Oklahoma as described herein in his own name and/or in the name of Covenant.

11. Charles E. Bray, Jr. ("Bray") is an Oklahoma resident. At all times material hereto, Bray offered and/or sold securities in and/or from Oklahoma as described herein in his own name and/or in the name of Covenant.

NATURE OF THE CASE

A. The Covenant Health Plan

12. Beginning in or about January, 2004 and continuing through December, 2005 (the "Relevant Time Period") Covenant was engaged in the business of selling a discount health services plan entitled the "Covenant Plan" (the "Health Plan"). The Covenant website stated that Covenant offered "sensible alternatives to skyrocketing premiums and out of pocket medical expenses." The website further explained that the Health Plan offers family coverage for prescription services, dental services and doctors services "at ten to forty percent less than the typical insured plan while traditional plans are eliminating these vital services." Covenant represented that in return for the payment of monthly fees, participants in the Health Plan, described as "members," were entitled to receive discounts on health care related products and

services including: hospitalization, physicians' services, vision care, dentistry, chiropractic services and prescription drugs. By accessing the Covenant website, members could access lists of providers from whom they could receive discounted health care related products and services. Members received an identification card containing a member identification number and prescription "bin" and "group" numbers. Members were told that if they use the services of, or buy products from, a participating provider they would receive a discount from the retail price of such service or product by presenting their membership card. Covenant, however, did not directly contract with providers for the discounts on products or services. Covenant contracted with third party companies that do have contracts or other arrangements with the health care providers allowing for such discounts. As a result of this arrangement, Covenant was required to pay the third party companies for the ability of members of the Health Plan to receive the discounts.

B. The Business Opportunities

13. To market the Health Plan to the public during the Relevant Time Period, Covenant recruited individuals to become sales agents. Covenant described the sales agents as "Independent Representatives" or "Executive Recruiters."

14. Independent Representatives and Executive Recruiters were recruited through newspaper advertisements, fliers, e-mails and personal referrals. The advertisements often contained religious appeals, including one stating that Covenant is a "Christian owned and operated (tithers) company" and that the opportunity to become an Independent Representative is the "Answer to your prayers."

15. Covenant represented that in return for the payment of an initial fee ranging from over One Thousand Dollars (\$1,000.00) to several thousand dollars, monthly participation in the Health Plan and execution of an Independent Representative Agreement ("Representative Agreement"), Independent Representatives would be entitled to sell memberships in the Health Plan and receive a commission from each member's monthly premium.

16. Covenant also offered individuals the opportunity to become "Executive Recruiters." Covenant represented that in return for the payment of an initial fee ranging from several thousand dollars to in excess of Ten Thousand Dollars (\$10,000.00), monthly participation in the Health Plan and execution of an Executive Recruiter Agreement ("Recruiter Agreement"), Executive Recruiters would be entitled to sell memberships in the Health Plan, receive commissions from the members' monthly premiums and receive overriding commissions from all Health Plan memberships sold by any person recruited by them to become an Independent Representative.

17. As part of the inducement to encourage individuals to become Executive Recruiters, Covenant promised Executive Recruiters that it would provide them with at least two prearranged sales appointments per day. Covenant represented that each sales appointment would be arranged with a person who had been previously contacted by Covenant and had indicated an interest in becoming a member of the Health Plan.

18. In connection with the offer and sale of the Independent Representative Agreements and the Executive Recruiter Agreements, Defendants omitted to state that at varying times, including for periods as long as nine months, members of the Health Plan were not receiving the represented discounts due to Covenant's failure to pay the third parties for access to the discounts. Members of the Health Plan who accessed the Covenant website for participating

service or product providers and who utilized those services or purchased those products were informed that they were not able to receive a discount. Defendants knew members were not receiving the represented discounts but continued to solicit new members into the Health Plan, continued to automatically draft members' accounts for the monthly premiums, and continued to offer and sell the Independent Representative and Executive Recruiter Agreements without disclosing that members would not receive the represented discounts. When a member called Covenant to complain that they were not receiving any discount and that the Health Plan cards were not being recognized by the providers listed on the Covenant website, Defendants directed the employees of Covenant to tell the member to submit a copy of the receipt and that Covenant would reimburse the member. Defendants then directed the employees not to make the reimbursement.

19. In connection with the offer and sale of the Recruiter Agreements, Defendants falsely represented that Executive Recruiters would receive the previously described two prearranged appointments per day. Most Executive Recruiters received few if any prearranged appointments. Defendants knew the Executive Recruiters were not receiving the represented appointments but continued to solicit new Executive Recruiters based upon these representations.

20. In connection with the offer and sale of the Independent Representative Agreements and the Executive Recruiter Agreements, Defendants omitted to state that Covenant was unable to pay earned commissions due to lack of money. Defendants knew that Covenant was not able to pay commissions but continued to solicit new Independent Representatives and Executive Recruiters based on the promise of receiving commissions from the sale of the Health Plan memberships.

C. The Securities Offering

21. In or about January 2004, Defendants began to offer and sell to investors what were described as "Quarterly Evaluations of Unassigned Memberships" (the "Assignment Contracts"). In connection with the marketing of the Health Plans, Covenant agreed to pay each Independent Representative who sold the membership ten percent (10%) of the monthly One Hundred Thirty-Nine Dollar (\$139.00) premium as a commission. The Assignment Contracts state that there are a specified number of Health Plan memberships to whom no Independent Representative is assigned to receive the commission. In return for an investment, often exceeding Ten Thousand Dollars (\$10,000.00), Covenant agreed, in the Assignment Contracts, to assign and pay the specified commission to the investor for as long as the memberships are in effect. The Assignment Contracts state that given the length of time the average membership is in effect, the return to the investor would exceed seventy-two percent (72%).

22. In connection with the offer and sale of the Assignment Contracts, Defendants falsely represented that the purchaser would be assigned a specific number of memberships from which they would receive commission revenue. During the time period in which the Assignment Contracts were sold, Defendants directed Covenant employees not to assign any memberships to the investors.

23. In connection with the offer and sale of the Assignment Contracts, Defendants omitted to state that Covenant had insufficient revenue to pay the promised return to the investor. Knowing that other purchasers of the Assignment Contracts were not receiving the represented returns, Defendants continued to offer and sell the Assignment Contracts.

FIRST CAUSE OF ACTION

(Violation of Section 806 of the Business Opportunity Act: Offering and/or Selling Unregistered Business Opportunities)

24. Plaintiff realleges and incorporates by reference each and every allegation contained in paragraphs 1 through 23 above.

25. The Independent Representative Agreements are business opportunities as defined by Section 802 of the Business Opportunity Act.

26. The Independent Representative Agreements offered and sold by Defendants are not and have not been registered, or otherwise qualified for, an exemption from registration pursuant to Section 803 of the Business Opportunity Act.

27. By reason of the foregoing, Defendants have violated Section 806 of the Business Opportunity Act and have violated, are violating, and unless enjoined, will continue to violate Section 806 of the Business Opportunity Act.

SECOND CAUSE OF ACTION

(Violation of Section 806 of the Business Opportunity Act: Offering and/or Selling Unregistered Business Opportunities)

28. Plaintiff realleges and incorporates by reference each and every allegation contained in the preceding cause of action.

29. The Executive Recruiter Agreements are business opportunities as defined by Section 802 of the Business Opportunity Act.

30. The Executive Recruiter Agreements offered and sold by Defendants are not and have not been registered, or otherwise qualified for, an exemption from registration pursuant to Section 803 of the Business Opportunity Act.

31. By reason of the foregoing, Defendants have violated Section 806 of the Business Opportunity Act and have violated, are violating, and unless enjoined, will continue to violate Section 806 of the Business Opportunity Act.

THIRD CAUSE OF ACTION

**(Violation of Section 819 of the Business Opportunity Act:
Untrue Statements of Material Facts and Omissions of Material Facts
in Connection With Offer, Sale or Purchase of Business Opportunities)**

32. Plaintiff realleges and incorporates by reference each and every allegation contained in the preceding causes of action.

33. Defendants, in connection with the offer and/or sale of business opportunities, directly and indirectly, made and are making untrue statements of material facts, and omitted and are omitting to state material facts necessary in order to make the statements made, in light of the circumstances under which they were and are made, not misleading as described in paragraphs 17 through 20 above.

34. By reason of the foregoing, Defendants, directly and indirectly, have violated, and unless enjoined, will continue to violate Section 819 of the Business Opportunity Act.

FOURTH CAUSE OF ACTION

**(Violation of Section 819 of the Business Opportunity Act:
Engaging in any Act, Practice, or Course of Business Which Operates or
Would Operate as a Fraud or Deceit upon any Person)**

35. The Department realleges and incorporates by reference each and every allegation contained in the preceding causes of action.

36. Defendants, in connection with the offer, sale, or purchase of business opportunities, and through the use of the untrue statements of material fact and the omissions of

material facts described in paragraphs 17 through 20 above, have engaged and are engaging in an act, practice, or course of business that has operated and continues to operate as a fraud or deceit upon the purchasers of the business opportunities.

37. By reason of the foregoing, Defendants, directly and indirectly, have violated Section 819 of the Business Opportunity Act, and have violated, are violating, and unless enjoined, will continue to violate Section 819 of the Business Opportunity Act.

FIFTH CAUSE OF ACTION

(Violation of Section 1-301 of the Act: Offering and/or Selling Unregistered Securities)

38. Plaintiff realleges and incorporates by reference each and every allegation contained in the preceding causes of action.

39. The Assignment Contracts are securities as defined by Section 1-102 of the Securities Act.

40. The securities offered and sold by Defendants are not and have not been registered, or otherwise qualified for, an exemption from registration pursuant to Section 1-201 of the Securities Act.

41. By reason of the foregoing, Defendants have violated Section 1-301 of the Securities Act and unless enjoined, will continue to violate Section 1-301 of the Securities Act.

SIXTH CAUSE OF ACTION

(Violation of Section 1-501 of the Securities Act: Untrue Statements of Material Facts and Omissions of Material Facts in Connection With Offer, Sale or Purchase of Securities)

42. Plaintiff realleges and incorporates by reference each and every allegation contained in the preceding causes of action.

43. Defendants, in connection with the offer, sale, or purchase of securities, directly and indirectly, made and are making untrue statements of material facts, and omitted and are omitting to state material facts necessary in order to make the statements made, in light of the circumstances under which they were and are made, not misleading, as described in paragraphs 22 and 23 above.

44. By reason of the foregoing, Defendants, directly and indirectly, have violated, and unless enjoined, will continue to violate Section 1-501 of the Securities Act.

PRAYER FOR RELIEF

Defendants have engaged in acts and practices in violation of the Business Opportunity Act and the Securities Act. Unless enjoined, Defendants will continue to engage in the acts and practices set forth herein and acts and practices of similar purport and object. A permanent injunction to issue against Defendants is necessary to prevent further violations of the Business Opportunity Act and the Securities Act.

WHEREFORE, based upon the foregoing, and pursuant to the authority specifically granted by Section 814 of the Business Opportunity Act and Section 1-603 of the Securities Act, the Department prays for the Court to grant the following relief:

I.

A permanent injunction, restraining and enjoining the Defendants, their agents, servants, employees, assigns, and all those persons, directly or indirectly, acting on their behalf, under their direction and control, and/or in active concert or participation with them, who receive actual

notice of the permanent injunction, by personal service, facsimile or otherwise, and each of them from:

- a. offering and selling any security in this state; and
- b. offering and selling any business opportunity in this state;

II.

An order requiring Defendants, their agents, servants, employees, assigns, and all persons, directly or indirectly, acting on their behalf, under their direction and control, and/or in active concert or participation with them, to disgorge all ill-gotten gains;

III.

An order imposing a civil penalty against Defendants in the amount of Fifty Thousand Dollars (\$50,000.00) each for violations of the Business Opportunity Act and Two Hundred Fifty Thousand Dollars (\$250,000.00) each for violations of the Securities Act; and

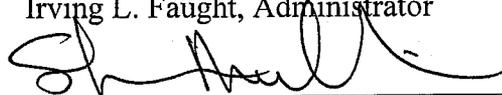
IV.

Such other equitable relief as the Court may deem necessary, just and proper in connection with the enforcement of the Business Opportunity Act and the Securities Act.

Respectfully submitted,

OKLAHOMA DEPARTMENT OF SECURITIES
Irving L. Faught, Administrator

By:

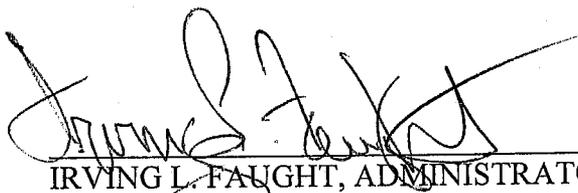


Shaun Mullins (OBA # 16869)
Oklahoma Department of Securities
120 North Robinson, Suite 860
Oklahoma City, Oklahoma 73102
(405) 280-7700

STATE OF OKLAHOMA)
)
COUNTY OF OKLAHOMA) SS.

Irving Faught, of lawful age, being first duly sworn deposes and says: that he is the Administrator of the Oklahoma Department of Securities, that he has read the foregoing Petition for Permanent Injunction and Other Equitable Relief and knows the contents thereof, and that the matters and things stated therein have been provided to him by staff members of the Department under his authority and direction, and are true and correct to the best of his knowledge, information and belief.

(SEAL)



IRVING L. FAUGHT, ADMINISTRATOR OF THE
OKLAHOMA DEPARTMENT OF SECURITIES
120 North Robinson, Suite 860
Oklahoma City, Oklahoma 73102
(405) 280-7700

Subscribed and sworn to before me this 2nd day of February, 2007.



Notary Public #14525

Expires September 18, 2008

(NOTARIAL SEAL)