

BEFORE THE
DEPARTMENT OF FINANCIAL INSTITUTIONS
DIVISION OF SECURITIES
STATE OF WISCONSIN

In the Matter of
COMMERCIAL EXPRESS, LLC, A & E
PRODUCTIONS, PROGRESSIVE FINANCIAL,
INC., CREATIVE ENTERTAINMENT GROUP,
JOEL A. FEIN, MARK D. McCLAFFERTY,
MARK A. ELLISON, JERRY LYNN AUBREY,
TIMOTHY M. HAZZARD, GRACE NA, LINDA S.
YORK, DANIEL T. LOEWENTHAL, and FRANCINE
BERGMAN,

PETITION FOR ORDER

Respondents.

File No. S-98105(EX)

The staff of the Enforcement Unit of the Registration & Enforcement Section of the Division of Securities alleges that:

1. Commercial Express, LLC ("Commercial") is a foreign business entity with last known business addresses of 429 Santa Monica Blvd., Ste. 340, Santa Monica, CA 90401 and 4540 Campus Dr., Ste. 100, Newport Beach, CA 92660.
2. A & E Productions ("A & E") is a foreign business entity, which formed Creative, with a last known business address of 4540 Campus Dr., Ste. 100, Newport Beach, CA 92660.
3. Progressive Financial, Inc. ("Progressive") is a foreign business entity, which formed Commercial, with a last known business address of 429 Santa Monica Blvd., Ste. 340, Santa Monica, CA 90401.
4. Creative Entertainment Group ("Creative") is a foreign business entity with a last known business address of 1901 Ave Of The Stars # 1710, Los Angeles, CA 90067-6018.
5. Joel A. Fein (DOB 1/17/52; CRD #1460960) ("Fein") is an individual who at all times material hereto has been a controlling person of Commercial, with a last known business address at that of Commercial.
6. Mark A. Ellison (DOB 9/4/62; CRD #2220837 and 8988141) ("Ellison") is an individual who at all times material hereto has been Vice President of Marketing of Commercial, with a last known business address at that of Commercial.
7. Mark D. McClafferty (DOB 11/19/65; crd #2235114) ("McClafferty") is an individual who at all times material hereto has been a controlling person of Commercial, with a last known business address at that of Commercial.
8. Grace Na ("Na") is an individual who at all times material hereto has been a controlling person of Commercial, with a last known business address at that of Commercial.
9. Jerry L. Aubrey (DOB 11/20/61; CRD #2851105; 8978986; 8976016; 8983753 and 8988251) ("Aubrey") is an individual who, upon information and belief, at all times material hereto has been a principal of Commercial, with a last known business address at that of Commercial.

10. Timothy M. Hazzard (DOB 4/30/56; CRD #1471777) ("Hazzard") is an individual who at all times material hereto has been President of Progressive, with a last known business address at that of Progressive.
11. Linda S. York ("York") is an individual who, upon information and belief, at all times material hereto has been a Principal of Creative, with a last known business address at that of Creative.
12. Daniel T. Loewenthal ("Loewenthal") is an individual who, upon information and belief, at all times material hereto has been a Managing Partner of Creative, with a last known business address at that of Creative.
13. Francine Bergman ("Bergman") is an individual who, upon information and belief, at all times material hereto has been a Managing Partner of Creative, with a last known business address at that of Creative.
14. During the period of May, 1998, Ellison, on behalf of Commercial, A & E, Progressive, Creative, Fine, McClafferty, Na, Aubrey, Hazzard, York, Loewenthal, Bergman, and himself, offered to at least one person in Wisconsin "media units" of Creative.
15. Pursuant to the offering materials received by persons in Wisconsin, Commercial was formed by Progressive and will engage in the business of purchasing air time for commercials.
16. Upon information and belief, investors can play a passive role in the company with no duties and responsibilities.
17. Upon information and belief, each investor will not be involved in the day-to-day management of Creative, since there are too many investors for them to each have any meaningful input, and they do not have the expertise or experience necessary to perform its duties.
18. Since the investors will be involved in a common enterprise with the expectation of profits to be derived from the essential managerial efforts of others, the "media units" offered by the respondents are investment contracts as defined by DFI-Sec 1.02(b), Wis. Adm. Code, and are therefore securities as defined by sec. 551.02(13), Wis. Stats.
19. The Creative investment contracts have never been registered for offer and sale in Wisconsin pursuant to Ch. 551, Wis. Stats.
20. All Respondents have violated sec. 551.21(1), Wis. Stats., by offering unregistered securities in Wisconsin.
21. Ellison was convicted of criminal offenses in at least six separate cases in the State of California between 1983 and 1991.
22. On December 28, 1988, the State of Wisconsin issued a Cease and Desist Order against Aubrey based on allegations of securities law violations.
23. On February 8, 1989, the State of New Mexico issued a Cease and Desist Order against Ellison based on allegations of securities law violations.
24. On April 12, 1989, the State of Illinois issued a Cease and Desist Order against Ellison based on allegations of securities law violations.
25. On July 2, 1996, the State of Iowa issued a Cease and Desist Order against Aubrey based on allegations of securities law violations.

- 26. On September 6, 1996, the State of Arkansas issued a Cease and Desist Order against McClafferty based on allegations of securities law violations.
- 27. On January 31, 1997, the State of Ohio issued a Cease and Desist Order against McClafferty based on allegations of securities law violations.
- 28. On March 3, 1998, the State of Pennsylvania issued a Cease and Desist Order against Commercial based on allegations of securities law violations.
- 29. In connection with the offer of the securities described in Paragraph 14 above, the Respondents omitted to disclose the criminal convictions referred to in Paragraph 21 above and the issuance of the orders referred to in Paragraphs 22 through 28 above.
- 30. All Respondents have violated sec. 551.41(2), Wis. Stats., by omitting to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, in connection with the offer and sale of securities to persons in Wisconsin.
- 31. Aubrey has wilfully violated an Order of the Division of Securities, contrary to sec. 551.58, Wis. Stats., after having been advised that "any wilful violation of an Order issued by the Commissioner of Securities of the State of Wisconsin under Ch. 551, Wis. Stats., is a criminal offense punishable under the provisions of sec. 551.58, Wis. Stats."

Therefore, the staff of the Enforcement Unit petitions the Administrator of the Division of Securities for the issuance of the attached Order pursuant to Ch. 551, Wis. Stats.

Mark E. Dorman 1-7-99
 Mark E. Dorman Date
 Examiner
 Enforcement Unit

David A. Cohen 1/13/99
 David A. Cohen Date
 Supervising Attorney
 Enforcement Unit