

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 04-60573-CIV-MORENO

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

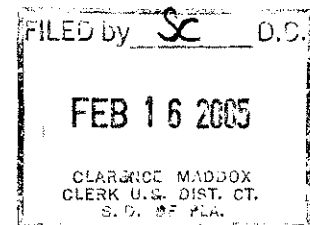
v.

MUTUAL BENEFITS CORP., JOEL STEINGER
a/k/a JOEL STEINER, LESLIE STEINGER a/k/a
LESLIE STEINGER, and PETER LOMBARDI,

Defendants

VIATICAL BENEFACTORS, LLC, VIATICAL
SERVICES, INC., KENSINGTON
MANAGEMENTS, INC., RAINY CONSULTING
CORP., TWIN GROVES INVESTMENTS, INC.,
P.J.L. CONSULTING, INC., SKS CONSULTING,
INC., and CAMDEN CONSULTING, INC.,

Relief Defendants.



ORDER GRANTING MOTION FOR PRELIMINARY INJUNCTION

For the reasons stated in the forty-seven page Report and Recommendation by Magistrate Judge Barry Garber, dated November 10, 2004, as well as the Magistrate's Supplemental Report and Recommendation of November 16, 2004, and upon independent review of the file, including the transcripts of the evidentiary hearing, the objections and responses to it, it is ORDERED that the Plaintiff's Motion for Preliminary Injunction be GRANTED.

In granting the Preliminary Injunction in favor of the Securities and Exchange Commission (SEC), the Court enjoins defendants Mutual Benefits Corporation (MBC), Joel Steinger, Leslie

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Steinger and Peter Lombardi, from committing further violations of the anti-fraud and registration provisions of the Federal Securities Laws in connection with the offering of securities by the Mutual Benefits Corporation. Relief defendants Viatical Benefactors, LLC, Viatical Services, Inc., Rainy Consulting Corp., Twin Groves Investments, Inc., P.J.L. Consulting, Inc., and Camden Consulting, Inc., are also enjoined consistent with the Supplemental Report and Recommendation that Magistrate Garber issued on November 16, 2004.¹

In granting the SEC's Motion for Preliminary Injunction the Court has specifically found sufficient evidence of fraud committed by the defendants, which resulted in a benefit to the relief defendants. Specifically the Court finds credible the evidence that the announced life expectancies were the product of fraud. The Magistrate's Report details the extensive fraud on the part of the defendants, precluding any need for the Court to reiterate the findings of fact which it has adopted in full after a *de novo* review. Having adopted the finding of widespread fraud on the part of the defendants, the Court maintains the asset freeze order and denies the motion to terminate the receiver²

The asset freeze is needed to preserve the innocent investor funds and to provide for possible disgorgement and civil penalties. The defendants' objections are overruled, as there was no evidence to contradict the plaintiff's witnesses except to challenge the credibility of Dr. Mitchell.

Before a court grants a motion for preliminary injunction made by a private litigant, that party

¹The Court on June 25, 2004 dismissed relief defendant S.K.S. Consulting, Inc. Thus the Court rejects the Magistrate's inadvertent inclusion of that relief defendant in the recommendation.

²The receiver appointed at the inception of this case has also consented to the entry of the preliminary injunction against Mutual Benefits Corporation (MBC).

has to show a substantial threat of irreparable injury that outweighs any injury to a non-moving party and that serves the public interest. These factors have been met by the uncontradicted evidence presented before the Magistrate and detailed in his report. In any event, the SEC in order to prevail on its request for preliminary injunction is called to a lesser burden than a private litigant. It must establish that there have been previous violations of Federal Securities Laws and a reasonable likelihood that those violations will be repeated. Assuming that the Viatical settlements are indeed securities conferring jurisdiction upon the Court, the SEC has met its burden.

The Court's only reluctance in not having issued the preliminary injunction earlier, while its temporary restraining order has been in effect for an unusually lengthy period for counsel to have opportunity to present objections, was due to the unsettled nature of whether viatical settlements are securities.

In its prior opinion, *SEC v. Mutual Benefits Corporation*, 323 F.Supp2d 1337 (S.D. Fla. 2004), this court held that the viatical settlements in question were securities covered by the Federal Securities Laws. In holding that such investments constitute securities however the Court found that there was substantial ground for difference of opinion that would justify an immediate appeal. Thus, the Court certified that an appeal of its June 25, 2004 order would be appropriate. Oral argument has been heard by the Eleventh Circuit Court of Appeals with a decision soon to be rendered. Because the issue of what constitutes a security is a disputed issue, it is difficult for the Court to hold that there is a "substantial" likelihood of success on the merits. After all, the Eleventh Circuit could disagree with this court and adopt the analysis of *SEC v. Life Partners, Inc.*, 87 F.3d 536 (D.C. Cir. 1996) without adopting the distinguishing factors of this case.


Normally, such a close question of law would preclude the granting of a preliminary

injunction. But the SEC is not an ordinary litigant. Instead it is charged with protecting the public by enforcing the Federal Securities Laws. Therefore the Court must grant the preliminary injunction unless and until there is a finding by a higher court that the viatical settlements in question were not securities. To deny the SEC's motion for preliminary injunction would result in the Court returning to those it has found to have participated in widespread fraud to continue in the fraud or at the very least to profit from past wrongdoing.

At oral argument counsel for the defendants indicated that the suspension of various licenses by the Florida Office of Insurance Registration prevent MBC from continuing with the transactions and that the company would probably have to proceed with some form of a bankruptcy petition. The defense argument is that an injunction is unnecessary. The Court however finds that the harm to the defendant is negligible. If bankruptcy is the proper route, the receiver, who is not burdened with the accusations of fraud is better equipped to protect investors and creditors.

WHEREFORE, the Order granting the temporary restraining order is converted into a preliminary injunction order with the same conditions binding all defendants until the conclusion of the trial or a ruling from the Eleventh Circuit Court of Appeals on the issue of subject matter jurisdiction.

DONE and ORDERED this 14th day of February, 2005 in Miami, Dade County, Florida.



FEDERICO A. MORENO
UNITED STATES DISTRICT JUDGE

Copies furnished to:
Service list of February 3, 2005